TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 6.

FLORIDA McGUIRE AND MATILDA CARO, PETITIONERS,

vs.

WILLIAM A. BLOUNT, WILLIAM FISHER, PENSACOLA CITY COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

PETITION FOR CERTIORARI FILED OCTOBER 28, 1903.
CERTIORARI AND RETURN FILED DECEMBER 10, 1903.

(19,100.)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 134.

FLORIDA McGUIRE AND MATILDA CARO, PETITIONERS,

vs.

WILLIAM A. BLOUNT, WILLIAM FISHER, PENSACOLA CITY COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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CAPTION.

a United States of America, Fifth Judicial Circuit.

Pleas and Proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday of November, 1902, and held in the Courtroom of said Court in the City of New Orleans, State of Louisiana, before the Honorable DON A. PARDEE, the Honorable ANDREW P. McCORMICK and the Honorable DAVID D. SHELBY, United States Circuit Judges for the Fifth Judicial Circuit.

FLORIDA MCGUIRE, *et al., Plaintiffs in Error,*
versus
WILLIAM A. BLOUNT, *et al., Defendants in Error.* } No. 1202.

Be it remembered, That heretofore, to-wit: on October 1st, 1902, a transcript of the record of the above styled cause from the Circuit Court of the United States for the Northern District of Florida, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, in the words and figures following (maps and plats omitted), to-wit:

1 United States Circuit Court of Appeals, Fifth Circuit.

FLORIDA MCGUIRE, *et al., Plaintiffs in Error,*
versus
WM A. BLOUNT, *et al.* } No. 1202.

On motion of E. Howard McCaleb, Esq., attorney for plaintiffs in error, and on suggesting to the Court that there are maps and plans contained in the record in this cause; that to print copies of same is difficult, costly and unnecessary; that the originals contained in the transcript of the record can be examined and consulted by the Court, if deemed advisable:

It is ordered that the clerk be, and he is hereby directed to omit from the printed transcript the said map and plans contained therein; reserving the right to counsel and the Court to use and consider the original map and plans contained in the record, should it be deemed advisable so to do.

[Indorsed:] No. 1202. U. S. Circuit Court of Appeals. Florida Maguire, *et als.*, plaintiffs in error, *vs.* Wm. A. Blount, *et als.* Motion to omit map and plans. E. Howard McCaleb, attorney. Filed Dec. 2, 1902. Charles H. Lednum, Clerk.

In the Circuit Court of the United States for the Northern District of Florida.

MISTRESS FLORIDA MCGUIRE, born Lavalette, Widow of — McGuire, Who Is a Resident Citizen of Mobile, Alabama, and of the United States, and Matilda Caro, Resident Citizen of Rio Grande City, State of Texas, and of the United States,

versus

WILLIAM A. BLOUNT, William Fisher, and Mrs. William Fisher, Pensacola City Company, Thomas C. Watson, John Williams, James M. Ballard, Mrs. Younge, Widow and Executrix or Administratrix of the Estate of C. C. Younge, Deceased. Defendants, Who Are Each Over the Age of Twenty-One Years, and Resident Citizens of the State of Florida, and of the United States, Excepting the Said Pensacola City Company, a Corporation Created and Existing under the Laws of the State of Florida, with Their Principal Place of Business Domiciled at the City of Pensacola.

Ejectment: Mesne Profits Exceeding $18,000.00.

2 Be it remembered, that on the eleventh day of January, in the year of our Lord one thousand nine hundred and two, Florida McGuire and Matilda Caro came into Court, by their attorneys, and filed a praecipe for the issuance of summons ad respondendum to William A. Blount and others. The praecipe which the said plaintiffs field is in the words and figures following, to-wit:

In the Circuit Court of the United States for the Northern District of Florida at Pensacola, Florida.

MISTRESS FLORIDA MCGUIRE, born Larvalette, Widow of — McGuire, Who Is a Resident Citizen of Mobile, Alabama, and of the United States, and Matilda Caro, Resident Citizen of Rio Grande City, State of Texas, and of the United States,

vs.

WILLIAM A. BLOUNT, William Fisher and Mrs. William Fisher, Pensacola City Company, Thomas C. Watson, John Williams, James M. Ballard, Mrs. Younge, Widow and Executrix or Administratrix of the Estate of C. C. Younge, Deceased, Defendants, Who Are Each Over the Age of Twenty-One Years, and Resident Citizens of the State of Florida, and of the United States, Excepting the Said

Pensacola City Company, a Corporation, Created and Existing Under the Laws of the State of Florida, With Their Principal Place of Business Domiciled at the City of Pensacola.

Ejectment: Mesne Profits Exceeding $18,000.00.

To Honorable F. W. Marsh, Clerk United States Circuit Court, Northern District of Florida, Pensacola, Florida:

You will please issue summons ad respondendum to aforesaid defendants, returnable according to law.

The description of the property sued for in said action is as follows:

"That certain parcel or piece of land, known as the "Gabriel Rivas" tract, containing two hundred sixty-two and one-half (262½) acres, more or less, in the eastern portion of the City of Pensacola, Escambia county, State of Florida, mostly in section (8), township (2), south range twenty-nine (29) west.

Damages, mesne profits exceeding $18,000.00

SIMEON BELDEN and E. ? DAVIS,
Attorneys for Plaintiff.

3 Indorsements: United States Circuit Court, Northern District of Florida. Mrs. Florida McGuire *vs.* William Blount and William Fisher. Praecipe. Filed January 11th, 1902. F. W. Marsh, Clerk.

And at the same time, to-wit: on the 11th day of January, A. D. 1902, the following stipulation for costs was entered into and filed with the clerk by the plaintiffs in the above entitled cause, to-wit:

STATE OF FLORIDA,
City of Pensacola.

Know all men by these presents, that we, Florida McGuire and Matilda Caro, principals, and Geo. W. Pryor and L. Carlson, as sureties, are held and firmly bound in solido unto Pensacola City Company, William A. Blount, William Fisher, Mrs. William Fisher, Thomas C. Watson, John Williams, John W. Bullard, Mrs. Younge, widow and executrix or administratrix of the estate of C. C. Younge, deceased, defendants, jointly and severally, in the sum of five hundred ($500.00) dollars, and for the faithful payment of which we bind ourselves, our heirs, executors and assigns by these presents.

This done and signed in the City of Pensacola, on this, the 11th day of January, in the year of our Lord 1902.

MATILDA CARO, *Principal*,
J. C. KEYSER, *Agent*,
....., *Principal*,
GEO W. PRYOR, Sr., *Agent*,
GEO. W. PRYOR, Sr., and
L. CARLSON, *Sureties*.

Now the condition of this obligation is such that, Florida McGuire and Matilda Caro having instituted a suit at law in the United States Circuit Court for the Northern District of Florida, at the City of Pensacola, in ejectment, against the defendants above named in this bond; therefore, if upon the final trial of the said case, there should be judgment against said plaintiffs and in favor of above defendants in said suit, then this bond shall remain in full force and effect, to secure the payment of all costs due said defendants, but if final
4 judgment is in favor of Florida McGuire and Matilda Caro, plaintiffs, then this obligation shall be null and void.

MATILDA CARO, *Principal*,
J. C. KEYSER, *Agent*,
FLORIDA McGUIRE, *Principal*,
GEO. W. PRYOR, Sr., *Agent*,
GEO. W. PRYOR, Sr., and
L. CARLSON, *Sureties*.

Personally came and appeared before me the undersigned authority, Geo. W. Pryor, Sr., and Ludwig Carlson, who on oath declare that, over and above all debts due by them, that they are each and severally worth over five hundred ($500.00) dollars.

[SEAL] FRANK MAURA, *Notary Public*.

Indorsements: Florida McGuire and Matilda Caro vs. William Blount and William Fisher *et al.* Stipulation for casts. Filed and approved this 11th day of January, 1902. F. W. Marsh, Clerk.

And afterwards, and on the same day, to-wit: on the 11th day of January, A. D. 1902, there issued out of the clerk's office of the said Court summons ad respondendum directed to the marshal of the said district, directing him to summon the said defendants, which writ was thereupon delivered to him and was by him executed and returned into the said clerk's office with his return indorsed thereon, and is in the words and figures following, to-wit:

United States Circuit Court, Fifth Circuit, Northern District of Florida.

The President of the United States to the Marshal of the Northern District of Florida—Greeting:

You are hereby commanded to summon William A. Blount, William Fisher, Mrs. William Fisher, Pensacola City Company, Thomas C Watson, John Williams, James M. Bullard, Mrs. Younge, widow and executrix or administratrix of the estate of C. C. Younge, deceased, who are each over the age of twenty-one years, and resident citizens of the State of Florida and of the United States, excepting the said Pensacola City Company, a corporation, created and existing under the laws of the State of Florida, with their principal place of business domiciled at the City of Pensacola, if they may be found in your district, to be and appear before the Circuit Court of the United States, Fifth Circuit and Northern District of Florida, at the Rule Day of said Court, to be held at the clerk's office in the City of Pensacola, on the first Monday of February next, to answer unto Florida McGuire and Matilda Caro in said Court on a plea of ejectment, wherein the plaintiff claims damages to the amount of mesne profits exceeding eighteen thousand dollars. And have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of this Court at the City of Pensacola, in said district, this eleventh day of January, A. D. 1902.

[SEAL]

F. W. MARSH, *Clerk*,
H. P. HOLMES, *D. C.*

E. T. DAVIS and SIMEON BELDEN,
Plaintiff's Attorneys.

The description of the property sued for in said action is as follows: That certain parcel or piece of land known as the "Gabriel Rivas" tract, containing two hundred sixty-two and one-half (262½) acres, more or less, in the eastern portion of the City of Pensacola, Escambia county, State of Florida, mostly in section (8), township (2), south range twenty-nine (29) west.

Indorsements: United States Circuit Court, Northern District of Florida. Mrs. Florida McGuire and Matilda Caro *vs.* William Blount, Wm. Fisher, *et al.* Summons. Issued Jan. 11, 1902. Returnable Feb. 3, 1902. Ret. and filed February 3rd, 1902. F. W. Marsh, Clerk. E. T. Davis and Simeon Belden, plaintiff's attorneys.

Marshal's Return: Received this writ at Pensacola, Fla., on the 21st day of Jany., 1902, and served the persons therein named by leaving a true copy with William A. Blount, William Fisher, Mrs. William Fisher, by leaving a copy with William Fisher, Thomas C. Watson, John Williams, James M. Bullard and Mrs. Younge, by leaving copy with William A. Blount. Pensacola City Company not found. This Jany. 23, 1902. T. F. McGourin, U. S. Marshal.

6 And thereafter, to-wit: on the third day of February, A. D. 1902, the plaintiffs in the above entitled suit, by their attorneys, came into Court and filed their declaration in the said cause, which is in the words and figures following, to-wit:

In the Circuit Court of the United States for the Northern District of Florida, at Pensacola, Florida.

MISTRESS FLORIDA MCGUIRE, born Larvalette, Widow of — McGuire, Who Is a Citizen of the United States, and a Resident of Mobile, Alabama, and Matilda Caro, a Citizen of the United States, Residing in Rio Grande City, State of Texas.

vs.

WILLIAM A. BLOUNT, William Fisher, Mrs. William Fisher, Pensacola City Company, Thomas C. Watson, John Williams, John W. Bullard, Mrs. Younge, Widow and Executrix or Administratrix of the Estate of C. C. Younge, Deceased, Defendants, Who Are Each Over the Age of Twenty-One Years, and Resident Citizens of Florida, and of the United States, Excepting the Pensacola City Company, a Corporation, Created and Existing Under the Laws of the State of Florida, with Their Principal Place of Business Domiciled at the City of Pensacola, State of Florida.

Declaration.

Mistress Florida McGuire, born Larvalette, widow of McGuire, who is a citizen of the United States, and a resident of Mobile, Alabama, and Matilda Caro, a citizen of the United States, residing in Rio Grande City, State of Texas, by their attorneys, sues at law, William A. Blount, William Fisher, Mrs. William Fisher, Pensacola City Company, Thomas C. Watson, John Williams, John W. Bullard, Mrs. Younge, widow and executrix or administratrix of the estate of C. C. Younge, deceased, defendants in an action of ejectment, because:

The said defendants are in possession of a certain tract or parcel of land, situate, lying and being in the County of Escambia, State of Florida, known and described as follows:

A certain parcel of land known as the "Gabriel Rivas" tract, containing about two hundred (262½) sixty-two
7 and one-half acres, more or less, in the eastern portion of the City of Pensacola, Escambia county, State of Florida, mostly in section eight, south range twenty-nine west, forming a lot of three hundred (300) superficial arpents, according to a figurative plan of the survey from the mouth of the rivulet, as the extreme east of this population according to the plan thereof, and is bound northerly and westerly by vacant lands. Southerly it confines with the Bay of Pensacola and easterly with the rivulet of the Texar, its most westerly limit being north of the compass with a declaration of seven degrees and fifty minutes to the northeast, as shown by the original Spanish grant to Gabriel Rivas, the 10th day of November, 1806, and registered in book seven, folio sixteen, number 1793, said property being, as aforesaid, situate in the County of Escambia, State of Florida, to which said plaintiffs claim title, and the defendants have received the profits of the said land since the, to-wit:

The first day of October, A. D. 1895, of the yearly value of three thousand ($3,000.00) dollars, and refuse to deliver possession of said land to the said plaintiffs, or to pay them the profits thereof.

The said land and profits are valued and worth one hundred and fifty thousand ($150,000.00) dollars or more, exclusive of costs, and therefore, they bring this suit.

SIMEON BELDEN and E. T. DAVIS,
Atty. for Plaintiff.

Indorsements: No... in Circuit Court United States, Northern District of Florida, at Pensacola, Florida. Mrs. Florida McGuire and Matilda Caro *vs.* William Blount and William Fisher, *et al.* Filed February 3, 1902. F. W. Marsh, Clerk. Simeon Belden and E. T. Davis, Attys. for Plaintiff.

8 And on the same day, to-wit: on the third day of February, A. D. 1902, the following appearance was duly filed by the defendants in the above entitled cause, to-wit:

In the United States Circuit Court, State of Florida.

FLORIDA MCGUIRE
vs.
WM. FISHER, R. A. Fisher, Wm. A. Blount, Thos. C. Watson, John Williams, Jno. W. Bullard, Julia A. Yonge, sued as widow and Exrx. or Admrx. of the estate of C. C. Yonge, Dec'd.

The Clerk of said Court will please enter our appearance for defendants.

BLOUNT & BLOUNT,
Attorneys for Defendant.

(Indorsements:) Florida McGuire *vs.* Wm. Fisher, *et als.* Filed February 3rd, 1903. F. W. Marsh, Clerk. Blount & Blount, Attorneys for Defendant.

And afterwards, to-wit: on the third day of March, A. D. 1902, the several defendants in the above entitled cause, by their attorneys, came into Court and filed their pleas to the declaration heretofore entered in this cause, which pleas are in the words and figures following, to-wit:

In United States Circuit Court, Northern District of Florida, at Pensacola.

FLORIDA MCGUIRE and MATILDA CARO
vs.
WILLIAM FISHER, *et al.*

W. A. Blount, one of the defendants, for plea to the declaration, says:

1. That he is not guilty of the wrong and injury complained of in the declaration.

2. That he claims only the following described portions of the tract of land for which he is sued in said declaration, to-wit:

East 30 ft. of lot 2, and lots 5, 7 and 8, in block 36.
Lots 11 and 12, in block 58.
9 Lots 3 to 13, inclusive, in block 68.
Lots 1 to 10, inclusive, in block 72.
Lots 6 to 20, inclusive, in block 75.
Lots 1 to 5, inclusive, in block 116.
Lots 4 to 6, inclusive, in block 122.
Lots 9 to 12, inclusive, in block 144.
Part of lot 11, in block 161.

In the new City of Pensacola, according to the plan thereof, copyrighted by Thos. C. Watson.

BLOUNT & BLOUNT,
Attorneys for Defts.

W. A. Blount, being duly sworn, says that he is one of the defendants in the foregoing suit and that the facts stated in the above pleas are true.

W. A. BLOUNT.

Sworn to and subscribed before me, this 3rd day of March, 1902.

[SEAL] E. H. ROSENSTEIN,
Notary Public.

(Indorsements:) Florida McGuire and Matilda Caro *vs.* Wm. Fisher, *et al.* Pleas of W. A. Blount. Filed March 3rd, 1902. F. W. Marsh, Clerk. Blount & Blount, Pensacola, Fla.

In the United States Circuit Court, Northern District of Florida, at Pensacola.

FLORIDA MCGUIRE and MATILDA CARO
vs.
WILLIAM FISHER, *et al.*

William Fisher, one of the defendants, for plea to the declation, says:

1. That he is not guilty of the wrong and injury complained of in the declaration.

2. That he claims only the following described portions of the tract of land for which he is sued in said declaration, to-wit:

Lots 7, 9 and 10, in block 21.
N. 1-2 of lot 4 and N. 1-2 of lot 5, in block 32.
Lots 5 to 10, both inclusive, in block 33.
Lots 1, 2, 3, 4, 5, 6 and 7, in block 35.
The western 2-3 of block 35 1-2.
Lot 1 and the western 10 ft. of lot 2, lots 6, 9 and 10, in block 36.
Lots 1 to 5, both inclusive, in block 53.
Lots 14 to 16, both inclusive, in block 68.
Lots 17 to 20, both inclusive, in block 92.
The whole of block 115.
Lots 6 to 16, both inclusive, in block 146.

BLOUNT & BLOUNT,
Attorneys for Defendants.

William Fisher, being duly sworn, says that he is one of the defendants in the foregoing suit, and that the facts stated in above pleas are true.

WM. FISHER.

Sworn to and subscribed before me, this 3rd day of March, A. D. 1902.

[SEAL] J. E. D'ALEMBERTE,
Notary Public.

(Indorsements:) Florida McGuire, *et al.*, *vs.* Wm. Fisher, *et al.* Plea of Wm. Fisher. Filed March 3rd, 1902. F. W. Marsh, Clerk.

In United States Circuit Court, Northern District of Florida, at Pensacola.

FLORIDA MCGUIRE and MATILDA CARO
vs.
WILLIAM FISHER, *et al.*

R. A. Fisher, one of the defendants sued as Mrs. William Fisher, for plea to the declaration, says:

That she was not in possession of, nor claimed at the time of the institution of this suit, any part of the property embraced within the tract sued for.

BLOUNT & BLOUNT,
Attorneys for Defendants.

R. A. Fisher (sued as Mrs. Wm. Fisher), being duly sworn, says that she is one of the defendants in the foregoing suit, and that the facts stated in the above plea are true.

R. A. FISHER.

Sworn to and subscribed before me, this 3rd day of March, A. D. 1902.

[SEAL] J. E. D'ALEMBERTE,
Notary Public.

(Indorsements:) Florida McGuire, *et al.*, *vs.* Wm. Fisher, *et al.* Plea of Mrs. R. A. Fisher. Filed March 3rd, 1902. F. W. Marsh, Clerk.

11 In the United States Circuit Court, Northern District of Florida, at Pensacola.

FLORIDA MCGUIRE and MATILDA CARO
vs.
WILLIAM FISHER, *et al.*

Thomas C. Watson, one of the defendants, for plea to the declaration, says:

1. That he is not guilty of the wrong and injury complained of in the declaration.

2. That he claims only the following described portions of the tract of land for which he is sued in said declaration, to-wit:

Lot 5, in block 21.
Lots 1 to 10, both inclusive, in block 67.
Lot 12, in block 74.
Lots 6 to 9, both inclusive, in block 76.
Lots 5 and 16, in block 92.
Lots 19 and 20, in block 95.
Lots 11 to 17, both inclusive, in block 114.
Lots 1 to 10, inclusive, and 17 to 20, inclusive, in block 117.
Lots 1 to 5, inclusive, and lots 11 to 18, inclusive, in block 140.
Lots 12 to 20, inclusive, in block 187.
Lots 12 to 20, inclusive, in block 188.

BLOUNT & BLOUNT,
Attorneys for Defendants.

Thos. C. Watson, being duly sworn, says that he is one of the defendants in the foregoing suit, and that the facts stated in the above pleas are true.

THOS. C. WATSON.

Sworn to and subscribed before me, this 3rd day of March 1902.

[SEAL]

LEE DANIELL,
Notary Public.

(Indorsements:) Florida McGuire and Matilda Caro *vs.* Wm. Fisher, *et al.* Pleas of Thos. C. Watson. Filed March 3rd, 1902. F. W. Marsh, Clerk. Blount & Blount, Pensacola, Florida.

12 In United States Circuit Court, Northern District of Florida, at Pensacola.

FLORIDA MCGUIRE and MATILDA CARO
vs.
WILLIAM FISHER, *et al.*

Julia A. Yonge, one of the defendants, for plea to the declaration, says:

That she was not in possession of, nor claimed at the time of the institution of this suit, any part of the property embraced within the tract sued for.

BLOUNT & BLOUNT,
Attorneys for Defendants.

Julia A. Yonge, being duly sworn, says that she is one of the defendants in the foregoing suit, and that the facts stated in the above plea are true.

JULIA A. YONGE.

Sworn to and subscribed before me, this 3rd day of March, 1902.

[SEAL] J. E. D'ALEMBERTE,
Notary Public.

(Indorsements:) Florida McGuire, *et al.*, *vs.* Wm. Fisher, *et al.* Plea of Mrs. Julia A. Yonge. Filed March 3rd, 1902. E. W. Marsh, Clerk.

In United States Circuit Court, Northern District of Florida, at Pensacola.

FLORIDA MCGUIRE and MATILDA CARO
vs.
WILLIAM FISHER, *et al.*

James M. Bullard, one of the defendants, for plea to the declaration, says:

1. That he is not guilty of the wrong and injury complained of in the declaration.

2. That the defendant claims only the following described portions of the said tract for which he is sued, claiming the same jointly with his wife, H. S. Bullard, to-wit:

Lots 1 and 2, in block 32.

BLOUNT & BLOUNT,
Attorneys for Defendants.

13 James M. Bullard, being duly sworn, says that he is one of the defendants in the foregoing suit, and that the facts stated in the above pleas are true.

his
JAMES M. x BULLARD.
mark

Sworn to and subscribed before me, this 3rd day of March, 1902.

[SEAL] J. E. D'ALEMBERTE,
Notary Public.

(Indorsements:) Florida McGuire, *et al., vs.* Wm. Fisher, *et al.* Plea of James M. Bullard. Filed March 3rd, 1902. F. W. Marsh, Clerk.

In United States Circuit Court, Northern District of Florida, at Pensacola.

FLORIDA MCGUIRE and MATILDA CARO
vs.
WILLIAM FISHER, *et al.*

John H. Williams, one of the defendants, for plea to the declaration, says:

1. That he is not guilty of the wrong and injury complained of in the declaration.

2. That he claims only the following described portions of the tract of land for which he is sued in said declaration, to-wit:

The south 1-2 of lot 5, in block 32.

And his daughter, Violet Williams, owns the south 1-2 of lot 4, in block 32.

BLOUNT & BLOUNT,
Attorneys for Defendants.

John H. Williams, being duly sworn, says that he is one of the defendants in the foregoing suit, and that the facts stated in the above pleas are true.

JOHN H. WILLIAMS.

Sworn to and subscribed before me, this 3rd day of March, 1902.

[SEAL] J. E. D'ALEMBERTE,
Notary Public.

(Indorsements:) Florida McGuire, *et al., vs.* Wm. Fisher, *et al.* Plea of John H. Williams. Filed March 3rd, 1902. F. W. Marsh, Clerk.

14 And afterwards, to-wit: on the 10th day of March, A. D. 1902, the plaintiffs in the above entitled cause, by their attorneys, came into Court and filed therein their replications to the pleas of the several defendants, which replications were in the words and figures following, to-wit:

United States Circuit Court, Northern District of Florida, Pensacola, Fla.

FLORIDA MCGUIRE and MATILDA CARO
vs.
WILLIAM A. BLOUNT, *et al.*

Now into Court comes Florida McGuire and Matilda Caro, plaintiffs in above entitled suit, through her undersigned attorneys, and for answer to pleas of defendant, William A. Blount, in above entitled suit, declares that he is a trespasser on the Rivas tract of land, owned by plaintiffs, as described in said plea.

2nd. That said defendant is not now, and never was, the owner of the land on the "Rivas" tract of land described in his plea, and that he acquired possession thereof by trespass, fraud and violence, and through conspiracy with other defendants in this suit and other persons not parties to this suit, and that his pretensions of possessions and ownership should be adjudged as without right or foundation in law.

SIMEON BELDEN and
E. T. DAVIS,
Attorneys for Plaintiffs.

Before the undersigned authority came and appeared Geo. W. Pryor, agent for Florida McGuire, and J. C. Keyser, agent for Matilda Caro, who, on oath, say that the above and foregoing replication to pleas are true and correct.

GEO. W. PRYOR, *Agt.*,
JOS. C. KEYSER, *Agt.*

[SEAL] FRANK MAURA, *Notary Public.*

(Indorsements:) United States Circuit Court, Northern District of Florida. Florida McGuire and Matilda Caro *vs.* Wm. A. Blount, *et al.* Replication to pleas of William A. Blount. Filed March 10th, 1902. F. W. Marsh, Clerk.

15 United States Circuit Court, Northern District of Florida, Pensacola, Fla.

FLORIDA MCGUIRE and MATILDA CARO
vs.
WILLIAM A. BLOUNT, *et al.*

Now, into Court comes Florida McGuire and Matilda Caro, plaintiffs in above entitled suit, through her undersigned attorneys, and for answer to pleas of defendant, William Fisher, in above entitled suit, declares that he is a trespasser on the Rivas tract of land, owned by plaintiffs, as described in his said plea.

2nd. That said defendant is not now, and never was the owner of the land of the "Rivas" tract of land described in his plea, and that he acquired possession thereof by trespass, fraud and violence, and through conspiracy with other defendants in this suit and other persons not parties to this suit, and that his pretensions of possession and ownership should be adjudged as without right or foundation in law.

SIMEON BELDEN and
E. T. DAVIS,
Attorneys for Plaintiffs.

Before the undersigned authority, came and appeared Geo. W. Pryor, agent for Florida McGuire, and J. C. Keyser, agent for Matilda Caro, who, on oath, say that the above and foregoing replication to pleas, are true and correct.

GEO. W. PRYOR, *Agt.*,
JOS. C. KEYSER, *Agt.*
[SEAL] FRANK MAURA, *Notary Public.*

(Indorsements:) United States Circuit Court, Northern District of Florida. Florida McGuire and Matilda Caro *vs.* W. A. Blount, *et als.* Replication to pleas of William Fisher. Filed March 10th, 1902. F. W. Marsh, Clerk.

United States Circuit Court, Northern District of Florida, Pensacola, Florida.

FLORIDA MCGUIRE and MATILDA CARO
vs.
WILLIAM A. BLOUNT, *et al.*

16 Now into Court comes Florida McGuire and Matilda Caro, plaintiffs in above entitled suit, through her undersigned attorneys, and for answer to pleas of defendant, Thomas C. Watson, in above entitled suit, declares that he is a

trespasser on the Rivas tract of land, owned by plaintiffs as described in his said plea.

2nd. That said defendant is not now and never was the owner of the land on the "Rivas" tract of land described in his plea, and that he acquired possession thereof by trespass, fraud and violence, and through conspiracy with other defendants in this suit, and other persons not parties to this suit, and that his pretensions of possession and ownership should be adjudged as without right or foundation in law.

SIMEON BELDEN and
E. T. DAVIS,
Attys. for Plaintiffs.

Before me, the undersigned authority, came and appeared Geo. W. Pryor, agent for Florida McGuire, and J. C. Keyser, agent for Matlida Caro, who, on oath, say that the above and foregoing replication to pleas are true and correct.

GEO. W. PRYOR, *Agt.*,
JOS. C. KEYSER, *Agt.*
[SEAL] FRANK MAURA, *Notary Public.*

(Indorsements:) United States Circuit Court, North District of Florida. Florida McGuire and Matilda Caro *vs.* W. A. Blount, *et als.* Replication to Plea of Thos. C. Watson. Filed March 10th, 1902. F. W. Marsh, Clerk.

United States Circuit Court, Northern District of Florida, Pensacola, Florida.

FLORIDA MCGUIRE and MATILDA CARO
vs.
WILLIAM A. BLOUNT, *et al.*

Now, into Court comes Florida McGuire and Matilda Caro, plaintiffs in above entitled suit, through her undersigned attorneys, and for answer to pleas of defendant, James H. Bullard, in above entitled suit, declares that he is a trespasses on the Rivas tract of land, owned by plaintiffs as described in his said plea.

2nd. That said defendant is not now and never was the owner of the land on the "Rivas" tract of land described in his
17 plea, and that he acquired possession thereof by trespass, fraud and violence, and through conspiracy with other defendants in this suit and other persons not parties to this suit, and that his pretensions of possession and ownership should be adjudged as without right or foundation in law.

SIMEON BELDEN and
E. T. DAVIS,
Attys. for Plaintiffs.

Before the undersigned authority came and appeared Geo. W. Pryor, agent for Florida McGuire, and J. C. Keyser, agent for Matilda Caro, who, on oath, say that the above and foregoing replication to pleas are true and correct.

GEO. W. PRYOR, *Agt.*,
JOS. C. KEYSER, *Agt.*
[SEAL] FRANK MAURA, *Notary Public.*

United States Circuit Court, Northern District of Florida, Pensacola, Florida.

FLORIDA MCGUIRE and MATILDA CARO
vs.
WILLIAM A. BLOUNT, *et al.*

Now into Court comes Florida McGuire and Matilda Caro, plaintiffs in above entitled suit, through her undersigned attorneys, and for answer to pleas of defendant, John H. Williams, in above entitled suit, declares that he is a trespasser on the Rivas tract of land, owned by plaintiffs as described in his said plea.

2nd. That said defendant is not now and never was the owner of the land on the "Rivas" tract of land described in his plea, and that he acquired possession thereof by trespass, fraud and violence, and through conspiracy with other defendants in this suit and other persons not parties to this suit, and that his pretensions of possession and ownership should be adjudged as without right or foundation in law.

SIMEON BELDEN, and
E. T. DAVIS,
Attys. for Plaintiffs.

18 Before me, the undersigned authority, came and appeared Geo. W. Pryor, agent for Florida McGuire, and J. C. Keyser, agent for Matilda Caro, who, on oath, says that the above and foregoing replication to pleas are true and correct.

GEO. W. PRYOR, *Agt.*,
JOS. C. KEYSER, *Agt.*
[SEAL] FRANK MAURA, *Notary Public.*

(Indorsements:) United States Circuit Court, Northern District of Florida. Florida McGuire and Matilda Caro *vs.* Wm. A. Blount. Replication to pleas of John H. Williams. Filed March 10th, 1902. F. W. Marsh, Clerk.

And afterwards, to-wit: on the nineteenth day of March, A. D. 1902, the following joinder of issue was filed by the plaintiffs in the above entitled cause, to-wit:

In the Circuit Court of the United States for the Northern District of Florida, at Pensacola, Fla.

And now unto this Honorable Court come Mrs. Florida McGuire and Matilda Caro, plaintiffs herein, and formally join issue upon the answers and the pleas of William A. Blount, William Fisher, Mrs. William Fisher, Pensacola City Company, Thomas C. Watson, John Williams, Jno. W. Bullard, widow and executrix estate of C. C. Yonge, denying the averments thereof and praying for judgment as prayed for in their original declaration, and they further pray for general relief.

JAMES WILKINSON,
SIMEON BELDEN,
E. T. DAVIS,
Attys. for Plaintiffs.

(Indorsed:) Florida McGuire, *et als., vs.* Wm. Fisher, *et als.* Joinder of issue. Filed March 19, 1902. F. W. Marsh, Clerk.

19 And on the same day, to-wit: on the nineteenth day of March, A. D. 1902, the following proceedings were had in open Court, to-wit:

FLORIDA MCGUIRE and MATILDA CARO
vs.
WILLIAM A. BLOUNT, William Fisher, Mrs. William Fisher, Pensacola City Company, Thos. C. Watson, John Williams, John W. Bullard, Mrs. Younge, Exer., Etc. } Law, No. 73.

Ejectment: Mesne Profits $18,000.00.

And now at this time this cause came on to be heard on defendants' motion to strike plaintiffs' special replications, and the same being argued by counsel, and considered by the Court, the said motion was sustained and the said special replications were stricken from the record.

Whereupon, the plaintiffs filed a general replication, and thereoupon the said cause came on for trial upon the issues in the pleadings contained, and upon motion of counsel for the respective parties, came the following jury, to-wit:

1. W. W. Wolfe,
2. J. Hauteman,
3. W. W. Hollifield,
4. William Bazzell,
5. Fred Gilmore,
6. A. A. Brooks,
7. Sam Isaacs,
8. J. Gugenhein,
9. E. Edwards,
10. W. B. Ferris,
11. F. M. Williams,
12. P. L. Rollo,

who being duly chosen, tried and sworn, and after hearing a part of the evidence and it being the hour of adjournment, the jury, after being instructed, were allowed to separate.

And on the twentieth day of March, A. D. 1902, the following proceedings were had in open Court, to-wit:

FLORIDA MCGUIRE and MATILDA CARO
vs.
W. A. BLOUNT, WILLIAM FISHER, *et al.*
} Law, No. 73.

Ejectment: Mesne Profits $18,000.00.

This cause coming on again to be heard on the evidence of the respective parties, and the jury being in the box, and the parties and their counsel in Court, the cause proceeded on the taking of the evidence, and it being the hour of adjournment, the jury, after being instructed, were allowed to separate.

20 And afterwards, to-wit: on the twenty-first day of March, A. D. 1902, the following proceedings were had in open Court, to-wit:

FLORIDA MCGUIRE and MATILDA CARO
vs.
W. A. BLOUNT and WILLIAM FISHER, *et al.*
} Law, No. 73.

Ejectment: Mesne Profits $18,000.

This cause coming on again to be heard on the evidence of the respective parties, and the jury being in the box, and the parties and their counsel in Court, the cause proceeded on the taking of the evidence, and it being the hour of adjournment, the jury, after being instructed, were allowed to separate.

And thereafter, to-wit: on the 22nd day of March, A. D. 1902, the following proceedings were had in open Court, to-wit:

FLORIDA MCGUIRE and MATILDA CARO
vs.
WILLIAM A. BLOUNT, William Fisher, Mrs. William Fisher, Pensacola City Company, Thomas C. Watson, John Williams, John W. Bullard, Mrs. Young, Exer., Etc.
} Law, No. 73.

Ejectment: Mesne Profits $18,000.00.

This cause coming on again to be heard, on the evidence of the respective parties thereto, and the jury being in the box, to-wit:

1. W. W. Wolfe,
2. J. Hauteman,
3. H. H. Hollifield,
4. William Bazzell,
5. Fred Gilmore,
6. A. A. Brooks,
7. Sam Isaacs,
8. J. Gugenheim,
9. E. Edwards,
10. W. B. Ferris,
11. F. M. Williams,
12. P. L. Rollo,

who, after hearing the evidence, the argument of the counsel, and upon the charges of the Court returned the following verdict, to-wit: "We, the jury, find for the defendants.

(Signed) W. B. FERRIS, *Foreman.*"

Whereupon, it was considered, ordered and adjudged by the Court, that the said plaintiffs take nothing in and by their said writ, and that they go hence without day, and that the defendants do have and recover of and from the plaintiffs or each of them, and against the sureties on their stipula-
21 tion or bond for costs, to-wit: George W. Pryor and L. Carlson, the costs of this action taxed at the sum of $164.40, and that the defendants do have execution therefor.

And on the 22nd day of July, A. D. 1902, the following appeal from the taxation of costs in the above entitled cause was filed by the plaintiffs in said cause, to-wit:

In the United States Circuit Court for the Northern District of Florida.

FLORIDA MCGUIRE and MATILDA CARO
vs.
W. A. BLOUNT and WM. FISHER.

On motion of Simeon Beldon, James Wilkinson and E. T. Davis, attorneys for Florida McGuire and Matilda Caro, plaintiffs in the above entitled suit, and on suggestion that on Monday, the 21st day of July, 1902, F. W. Marsh, the clerk of said Court, after due notice to said attorneys, taxed costs against plaintiffs in said suit and their sureties for costs as shown accompanying bill of costs and made a part of this motion. And on further suggestion that they believe there is error to the prejudice of said plaintiffs in charging and entering costs in favor of the defendants, W. A. Blount and Wm. Fisher, *et al.*, for witness fees and marshal's fees for summoning witnesses and clerk's fees for issuing process of namely: Alfred Daniels, John Powell, Benjamin Powell, Sarah Sunday, Eliza Dean, Harrison McCullough, Phil. Lennox, Tom Simmons, Ella Dixon, Bell Williams, Nancy Nichols, James Beck, Will Pious.

Louisa Watkins, Mulhaney Freeney, E. B. Bonifay, F. C. Bonifay, Willie Monroe, Mrs. Dollie Beck, Thomas Pate, Oscar Collins, Henry Jordan, Julia Moore, Joseph Rogers, John A. Johnson and George Petterson, who did not testify in said suit, upon the trial thereof, and was unnecessarily summoned.

And for these reasons, said attorneys move for an appeal to the Judge of said Court, for review of said findings and entry of said costs above stated, that the said findings and entry may be reviewed and corrected.

SIMEON BELDEN, JAMES WILKINSON
and E. T. DAVIS, *Attys. for Plaintiffs.*

22 In the United States Circuit Court, Northern District of Florida.

FLORIDA MCGUIRE and MATILDA CARO
vs.
WILLIAM A. BLOUNT, WILLIAM FISHER, *et al.*

After due notice to plaintiff's attorneys, and upon application of defendants for taxation of costs in the above entitled action pursuant to the judgment of this Court, and after considering affidavits and proofs submitted in support of defendants' claim for costs and plaintiffs' objection thereto:

It is now ordered and adjudged that the fees paid to each of the witnesses named in defendants' affidavit, filed May 14, 1902, be and the same are hereby taxed as costs in the suit aforesaid, and the said costs are hereby taxed as follows:

Witnesses summoned on behalf of defendants.....	$106.50
Attorneys' docket fee for defendants.....	20.00
Amts. due and payable to clerk of Court for issuing process, filing papers, etc.....	18.40
Sums paid U. S. Marshal for summoning witnesses.....	19.50

And it is now ordered and adjudged that the defendants, William A. Blount, William Fisher, *et al.*, do have and recover of and from plaintiffs Florida McGuire and Matilda Caro, principals, and George W. Pryor and L. Carlson, sureties on plaintiffs' cost bond, the said sum of $164.40, and that the defendants do have execution therefor.

Done and ordered this 21st day of July, A. D. 1902.

F. W. MARSH, *Clerk.*

Indorsements: Florida McGuire, *et al., vs.* W. A. Blount, *et al.* Appeal from taxation of costs. Filed July 22, 1902. F. W. Marsh, Clerk.

And on the 18th day of August, 1902, the Court made and caused to be filed the following order in the above entitled cause, to-wit:

In the Circuit Court of the United States for the Northern District of Florida.

FLORIDA MCGUIRE and MATILDA CARO

vs.

WILLIAM A. BLOUNT, *et al.*

This cause coming on to be heard on the appeal taken
23 by the complainants from the order of taxation of costs made and entered by the clerk against the said complainants, under and by virtue of the judgment of this Court, heretofore rendered in the said cause, and the said appeal having been argued by the respective counsel and considered by the Court:

It is now ordered and adjudged that the fees paid to each of the winesses named in defendants' affidavit, filed May 14, 1902, be and the same are hereby taxed as costs in the suit aforesaid, and the said costs are hereby taxed as follows:

Witnesses summoned on behalf of defendants.....	$106.50
Attorneys' docket fee for defendants.....	20.00
Amts. due and payable to clerk of Court for issuing process, filing papers, etc.....	18.40
Sums paid U. S. Marshal for summoning witnesses.....	19.50

And it is now ordered and adjudged that the defendants, William A. Blount, William Fisher, *et al.*, do have and recover of and from plaintiffs, Florida McGuire and Matilda Caro, principals, and George W. Pryor and L. Carlson, sureties on plaintiffs' cost bond, and said sum of $164.40, and that the defendants do have execution therefor.

Done and ordered this 18th day of August, A. D. 1902.

CHAS. SWAYNE, *Judge.*

Indorsements: Florida McGuire, *et al., vs.* W. A. Blount, *et al.* Order. Filed August 22nd, 1902. F. W. Marsh, Clerk.

And thereafter, to-wit: on the thirtieth day of August, 1902, the following bill of exceptions was filed in the above styled cause by the plaintiffs therein, to-wit:

Bill of Exceptions.

In the Circuit Court of the United States, Northern District of Florida.

FLORIDA MCGUIRE and MATILDA CARO
vs.
W. A. BLOUNT and WILLIAM FISHER, *et al.*

Be it remembered, that at a term of the Circuit Court of the United States for the Northern District of Florida, begun and held in said district, during the month of March, A. D. 1902, an action therein pending, wherein Florida McGuire and
24 Matilda Caro was plaintiffs and William A. Blount and William Fisher, *et al.*, were defendants, came on to be heard before the Hon. Charles Swayne, the Judge of the said district holding the said Court on the 17th day of March, 1902, at which date came the said parties by their respective attorneys.

And the said action was called for trial on the said 17th day of March, 1902, and during the said term, and thereupon the plaintiffs presented their petition, asking the Hon. Charles Swayne, Judge of said district then and there presiding, to recuse himself, upon the grounds set out in said petition, which petition is set out in words and figures as follows:

United States Circuit Court, Fifth Judicial Circuit.

FLORIDA MCGUIRE and MATILDA CARO
vs.
W. A. BLOUNT and WILLIAM FISHER, *et al.*

To the Honorable Charles Swayne, Judge of the U. S. Court, Fifth Judicial Circuit for the Northern District of Florida:

The petition of Mrs. Widow Florida McGuire and Matilda Caro, plaintiffs in the above entitled numbered suit, respectfully represents that the Honorable Judge of this Court should recuse himself in this cause for the following grounds and reasons:

That in February, 1901, your petitioner, Mrs. Florida McGuire, filed in this Court a suit for the same property at issue in this cause, against the Pensacola City Co., *et als.*, asserting the same rights of ownership as herein; that pending said suit, Mrs. Lydia C. Swayne, wife of the Honorable Judge of this Court, made a contract to buy, and did buy a portion of the property at issue, in that and this cause, from Chas. H. Ed-

gar, through T. C. Watson & Co., of Pensacola, agents; that your Honor, on the 12th of Nov., 1901, stated from the bench in open Court, that your wife, Mrs. Lydia C. Swayne, with her own money had agreed or negotiated to buy said property, but when you saw said deed was a quit claim deed, and comprised a portion of the Rivas property, in litigation before you, you return said [deed] to the said vendor. That it does not appear that the [said] Mrs. Lydia C. Swayne even consented to the return of said deed, and the said vendor, Charles H. Edgar, has still the right to sue said lady to accept said deed and
25 title, and that said Mrs. Lydia C. Swayne having a present or potential interest in the aforesaid property, and being so nearly or closely related to the Honorable Judge of this Court, said interest or potential interest, we respectfully submit, requires your Honor to recuse yourself herein. That your petitioners desire to take the testimony of witnesses, in order that any ruling of the Court either for or against this formal application should be made of record in this case.

Wherefore petitioners pray that they be allowed to file this petition that you recuse yourself in this cause, and call in another Federal Judge to try this cause, according to law, all of which is respectfully submitted.

SIMEON BELDEN,
E. T. DAVIS,
JAMES WILKINSON,
Attys. for Petitioners.

Whereupon the Hon. Charles Swayne, Judge of the Court, granted the following order in words and figures as follows:

"The order to let this petition be filed in this case, March 17th, 1902, is granted."

Whereupon the said Judge, after granting said order, proceeded to pass instanter upon the application in words and figures as follows:

"As to one or two statements in this petition the Court will say: that Mrs. Lydia C. Swayne did not buy the property in question from Charles H. Edgar, but that the statement made by the Court on the 12th day of Nov., 1901, was the statement that has always been made about it, that the purchase was negotiated for, a quit claim deed was set and returned. The statement that it does not appear that Mrs. Lydia C. Swayne ever consented to the return of the said deed was not correct. The Court stated that the deed was returned and of course it was so understood; could be understood; was understood, and if not, is understood now that the deed was sent back by her advice, consent and request; therefore, the Court thinks that

she has not any interest in the property in any way whatever, even if the counsel is right as to the rights of Edgar, in case he should have tendered a warranty deed, which I doubt. The time that has passed since that time has precluded him from doing so, or of taking any action, in my judgment, therefore, however, the Court is compelled to overrule this motion for the reasons stated.

26 Wherefore plaintiffs by their counsel, when said petition to recuse was denied, did then and there except to the action and ruling of the Court.

And this constitutes the plaintiffs' first exception.

And the said Judge thereafter upon another date (March 19th, 1902), did file an ex parte affidavit, but the same was never made in Court, or before plaintiffs or their counsel, and they had no opportunity to cross examine said deponent, or to disprove the statements in said affidavit contained, which affidavit is in words and figures as follows,

(*Marked Exhibit "A."*)

STATE OF FLORIDA,
Escambia County.

Before me subscriber personally appeared J. J. Hooten who being duly sworn, says that he is, and has been for a number of years, a partner in the firm of Thomas C. Watson & Co., conducting a real estate in the City of Pensacola, that he is cognizant of the negotiation between Mrs. Lydia C. Swayne, through her husband Chas. Swayne, for the purchase from Chas. H. Edgar of the block ninety-one, New City Pensacola: That he knows that the deed tendered as a result of said negotiation to the said Charles Swayne for the said Lydia C. Swayne, was a quit claim deed; that such deed was the only kind of deed which the said Charles H. Edgar would make: That such deed was refused by the said Charles Swayne, and from that time to this no claim has been made by the said Edgar or his agents for any further consu-mation of the negotiation looking to the purchase of the said real estate by the said Lydia C. Swayne: That the said deed was never delivered to the said Swayne, but upon his being informed by the firm of Thomas C. Watson & Co., through affiant, that the deed was a quit claim deed, he refused to proceed further with the negotiation, and that affiant returned the said deed to the said Edgar without transmitting it or delivering it either to the said Charles Swayne, or to the said Lydia C. Swayne, and that, so far as affiant knows, it has been in the posession of the said Charles H. Edgar ever since said time, unless it has been destroyed by him: That the said negotiations

for the purchase of the said property was in the months of June and July, 1901, and that nothing has been done in the matters since said months.

J. J. HOOTEN.

Sworn to and subscribed before me this 18th day of March, A. D. 1902.

[SEAL] PATTILO CAMPBELL,
Notary Public State of Florida at Large.

27 And thereupon, after the court had overruled plaintiffs petition to rescuse, the jurors were selected, chosen and sworn to try the issue in matter aforesaid joined.

And the said palintiffs to prove the issues in their behalf offered in evidence the Spanish Grant of Gabriel de Rivas to the tract of land in question, with a certified copy of the grant annexed, also a map or plan annexed to the grant, and a certified translation of the grant, certified to by John De La Rua, keeper of the Spanish Archieves of West Florida, which certified copy in Spanish language has annexed thereto the plot or map, and is set out in words and figures, to-wit: Marked Exhibit "A."

Exhibit A.

Dn. Juan Ventura Morales Intendente interino de esta Provincia de la Florida Occidental, y Subdelegado de la Superintendencia General de Real Hacienda en esta Juez de Arribadas de Tierras y Solares Realengos &c.—Por quento por parte de Gabriel de Rivas, vecino y antiguo habitante de esta Plaza se presento instendo a esta Intendencia general en nuebe de Abril del corriente ano pidiondo que en calidad de Poblador se le concediese gratuitanente el Torreno Realengo que ocupa la casa No. 113. y que por el informe que dio el Ministro de Real Hacienda resulto que los edificios contenidos en el se encontraban destinados para servicio del Real Hospital, y que por las rezones que alegaba dicho interesado podria concedersele otro que hubiere vacanto de debate sin lugar dicha solicitude en echo de Julio siguiente proviniendosele designase determinadamente el parage en que hubiese Terrenos Vacantes: Recurrio de nuevo por otra instancia de 28 del nismo Julio solicitando un Terreno de trescientos Arpendes de superficie a media legua poco mas o monos de esta Plaza a la entrada del Bayu de Texar; y por decreto de 31, treinta y uno se mando pasar el expediente a Dn. Vicvente Sebastian Pintado para madir y deslindar dicho Terreno formando el Plano figurative que presento con certificacion al pie de el de la diligencia de Apeo a ese de un quarto

de milla de las terrestes Ynglesas de la boca del Arroyuelo del Hurcal entre el Nord Nordeste y Nordeste quarta al Norte, cuyo Arroyuelo es el extremo del Este de esta Poblacion, segun el Plano de ella y linda por la parte Setentrional y Occidental con Tierras Realengas por la Meridional confina con la Bahia de Panzacola, y por el Oriente con el Riachuelo del Texar dirigiendose el limite mas Oeste al Norte de la Bruxula declinando esta siete grados y cinquenta minutos al Nordeste

coso manifiesta dicho Plano en que vo figurado el Terreno
28 anotadas las direcciones de sus lados en parches lineales de paris y con referencia a quento va expresado,

del Senor mi Asesor interino en Diez y Siete de Octubre ultimo un suto cuyo tenor es el que sigue Vista en conformidad de lo expuesto por el Senor Ministro de Real Hacienda y por justa consideracion a las

briel de Rivas se le concede el Terreno de trescientos arpendes de Superficie que demuestra el Plano antecendente con calidad de establecerse en el y poblarlo dentro de dos anos despachandosele el correspondiente Titulo en la forma ordinaria. Por tanto usando de las facultades que el Rey Nuestro Senor (Dios le guarde) me tiene conferidas, y en Su Real Nombre, concedo al Expresado Gabriel de Rivas los trescientos arpendes planos de Tierra que can mencionados bajo los linderos Rumbos, y distancias que manifiesta el Plano figurativo que va unido a este Titulo: y en su consequencia le imparto entero y directo dominio, para que como propios suyos los posea, cultive, venda, o enagene a su voluntad, como concedidos graciosamente y sin interes alguno a favor de la Real Hacienda y le doy poder para que aprehenda su posecion o continue en la que tuviere en la que le pongo y amparo sin perjuicio de Tercero que mejor derecho tenga, y con la calidad y condicion de que ha de couplir con lo dispuesto en la instruccion que sobre Tierras formo y publico la intendencia general de la Retrocedida Provincia de la Luisiana en Diez y Siete de Julio de Mil Setecientos Noven y Nueve En fee de lu qual mando Despachar el presente firmado de mi mano, sellado con el de mis armas y refrendado del infrascripto Secretario interino de esta Intendencia general, en cuya Oficina como en la del Ministerio de Real Hacienda de esta Plaza quedara registrado y se tomara la razon Dado en Panzacola a Diez de Noviembre de Mil Ochocientos y Seis.

Titulo....Juan Ventura Morales.—Sello.—Franco Gutierrez de Arroyo. Queda registrado el Titulo antecedente en el Libro 429 destinado a este fin en la Secretaria de mi cargo a vuelta de fojas 50, 51 y 52 a que me remito.

Registrado.....Pansacola 10 de Noviembre de 1806..... Franco Gutierrez de Arroyo .. ..

En la Contaduria pral. Exto de esta Provincia se tomo razon del Titulo antecedente a foxas Setenta y siete y setenta y ocho Panzacola, 10 de Noviembre de 1806.

Nota.....Juan Franco Arnead de Courville ....

Dn. Vicente Sebastian Pintado, Capitan de Cabelleria de Milicias y Agrimensor general de la Florida Occidental—certifico: que en los dias dos y tres del corriente mes y ano medi,
29 linde y amojone para Gabriel de Rivas vecino de esta Plaza, en presencia de los testigos Dn. Antonio Molina y Marcos Riesa, no pudiendo asistir el interesado un Terreno de trescientas arpendes de area y superficie plana medidos a la percha lineal de la cuerda de paris, de Diez y Ocho pies lineales, de la misma Ciudad, contenidas esas perchas planas por arpan segun costumbre guadeteca de esta Provincia, cituado poco mas de un quarto de milla de las Terrestres Inglesas de la Boca del Arroyuelo hurcal entre el N Ne y Ne ¼ N; Cuyo Arroyuelo es el Extremo del Este de esta Poblacion segun el Plano de ella y unida por la parte Septrentional y Occidental con Tierras Realengas; por la Meridional confina con la Bahia de Panzacola; y por la Oriental con el Riachuelo del Texar; dirijiendose el limite mas Oeste, al Norte; y el que termina la propiedad al Este, todo de la Bruxula declinando esta Siete grados y cinquenta Minutos al NordEste, como mas Claramente manifiesta al Plano que antecede, en el que va figurado el Terreno, anotadas las dimendiones de los lados en perchas pineales de Paris, los arboles y mojones que sirven de linderos, y los demas lotes y confines naturales y artificiales El Apeo se practico en virtud de Decreto del Sr. Dn. Juan Ventura Morales Yntendente general de esta Provincia y Subdelegado de la Superintendencia general Juez de Arribadas de Tierras y solares Realengos con fecha Trenita uno de Julio ultimo y para que conste

Surveyor's Certificates. | doy la presente en la Plaza de Panzacola a los 6 Dias del Mes de Octubre de 1806 anos. * * Vicente Sebastian Pintado. ....

Es copia del Plano y diligencia de la p original que se halla anexe al Expediente del asunto y se saco para unir al titulo concejo mandado despachar por auto de diez y siete del corriente y quedo registrado en el Libro VII fol 16 y vta. No. 1793 Panza 27 de Octubre de 1806 Sebastian Pintado.

Certificate. * * Vte. |

Filed March 19, 1902. F. W. MARSH, *Clerk.*

[Plat of land.]

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

Office of United States Surveyor General.

TALLAHASSEE, FLA., *December* 6th, 1898.

I, R. L. Scarlett, United States Surveyor General for the State of Florida, do hereby certify that the attached tracing is a true copy of a Spanish Document recorded on pages 428 and 429 of Book "A," containing a record of all Spanish
30 Titles, which have been laid before the land commissioners for confirmation, the plats and certificates of surveys of said lands, granted by the Spanish Government in the Province of West Florida, which book is now in my possession as keeper of the public archives.

In testimony whereof, I have hereunto attached my hand and private seal, there being no official seal in this office, this 6th day of December, A. D. 1898.

R. L. SCARLETT.

Offered by the Plaintiffs:

The Certified Translation of the "Grant to Gabriel de Rivas."

(Designated as *Exhibit B.*")

Which grant is in words and figures as follows:

Exhibit B.

Mr. John Ventura Moraes, Provisional Intendent of this Province of West Florida, and subdelegate of the Superintendence General of Royal Exchequer therein, Judge of "Arribadas" of Vacaus lands and lots, etc.: In as much at the solicitation of Gabriel de Rivas, a resident and an old inhabitant of this place, was presented a petition on the ninth day of April of this current year asking that as a settler it be granted to him gratuitously the vacant lot occupied by the house No. 113, and from the information given by the minister of the Royal Exchequer it appearing that the buildings contained therein were destined for the use of the Royal Hospital and that for the reasons that were alleged by the said interested party another lot that might be vacant could be granted to him. It was decreed without notice of said petition, on the eighth day of July following, informing him that he determinately designate the place in which there was vacant lots.

He again applied by another petition of 28th day of the said July asking for a lot of three hundred and superficial arpens at a half league more or less from this place at the mouth of the Bayou Texar; and by decree of the 31st it was ordered that the said petition pass to Mr. Vincente Sebastian Pintado to measure and mark the limits and bounds of said lots, forming a figurative plan, which he presented with a certificate, at the foot thereof, of the survey at more than a quarter of a mile of English Terrestial measurement from the mouth of the rivulet of the Marsh between the North, North East and North East by North; which rivulet
31 is the extreme east of this population according to the plan thereof, and is bounded northerly and westerly by vacant lands, southerly it confines with the Bay of Pensacola and easterly with the rivulet of the Texar, its most western limit being north of the compass with a declination of seven degrees and fifty minutes to the northeast as is shown by said plan in which is figured the lots noted the dimensions of its sides in by Gabriel de Rivas, it is conceded of three hundred superficial arpens which is demonstrated by the preceding plan with condition of establishing himself thereon and populating it wishes [within] two years. Issuing to him the corresponding title in the ordinary form.

Title. Therefore using the powers that the King, our Master (whom God preserves), has conferred upon me, and in his Royal name, I grant to the said Gabriel de Rivas the three hundred superficial arpens which are already mentioned, under the boundaries, courses and distances which are shown by the figurative plan, which plan will be affixed to this title. And in consequence thereof, I impart to him full and direct domain, so that as his own he possess, cultivate, sell or alienate at his will, as granted gratitously and without interest whatever in the four of the Royal Exchequer and I grant him power to take its possession or continue in the possession that he may have thereof, and in which I place and will protect him without prejudice to a third party that may have a better right thereto, with the stipulation and condition that he must comply with what is ordered in the instructions about lands, that was enacted and published by the general Administration of the retroceded Province of Louisiana on the seventeenth of July one thousand seven hundred and ninety-nine. In faith of which I order these presents to issue, signed with my hands, sealed with the seal of my Coat of Arms, and countersigned by the under[sign]ed acting secretary of his General Administration. In whose office as also in that of the Minister of the Royal Exchequer of this place will remain registered an account taken thereof.

Given at Pensacola on the tenth of November, one thousand eight hundred and six, John Ventura Morales—seal—Fran Gutierres de Arroyo.

The foregoing title remains registered in the book destined for that purpose in the office of my charge at pages 50, 51 and 52, and to which I refer. Pensacola 10 of November, 1806—Franc Gutierreo de Arroyo.

In the General Auditor's office of the Army of this Province an account was taken of the foregoing title at pages seventy-seven and seventy-eight, Pensacola Nov. 10, 1806. John Franc Arnand de Courville.

32 Surveyor's Certificate. Mr. Vincente Sebastian Pinatdo, Captain of Militia Cavalry and Surveyor General of West Florida, certifies that on the days of second and third of the present month and year, I measured, bounded and sand marked for Gabriel de Rivas, a citizen of this place, in the presence of the witnesses, Mr. Anthony Molina and Marcas Riera, the interested party not being able to assist, a lot of three hundred area and superficial arpens, measured by the lineal perch of the City of Paris, fifteen lineal feet of the same city counting one hundred level perches per arpen according to the Agravian Practice of this Province, situated more or less at a quarter of a mile of English Teras trial measurement from the mouth of the rivulet of the Marsh between the north northeast and northeast by north, which rivulet is the extreme east of this population according to the plan thereof, and is bounded northerly and westerly by vacant lands, southerly it confines with the Bay of Pensacola and easterly with the rivulet of the Texar; Its most western limit, to the north and that which terminates the profundity to the east, all as per compass with a declination of seven degrees and fifty minutes to the northeast as is more clearly shown by the plan which precedes and in which is figured the lot, noted the dimensions of its sides in lineal perches of Paris, the trees and land marks that serve as boundaries and other marks and confines natural and artificial. The survey was made by virtue of a decree of Mr. John Ventura Morales, Intendent General of the Province, and subdelegate of the superintendence general, Judge of "Arribados" of vacant lands and lots dated thirty-first of July ultimo. And so that it may appear I give these presents at Pensacola on the 6th day of the month of October in the year 1806. Vincente Sebastian Pintado. It is a copy of the original plat and precedure which is annexed to the proceedings in the matter, and which is taken to annex to the title of concession ordered to be issued by decree of the seventeenth instant and remains

registered in book VII, fol. 16, No. 1793, Pensacola 27 October, 1806—Vincente Sebastian Pintado.

I, F. E. de la Rua, Keeper of the Spanish Archives of West Florida and translator from the Spanish into the English, do hereby certify that the foregoing is a correct translation into English of the Spanish Grant to Gabriel de Rivas and made from said grant on record in the Archives of my charge in book A of the records of Spanish titles.

For plat accompanying said grant (and the tracing of which is omitted by me and does not accompany this translation), reference is made to the said book A of said records.

33 Given under my hand and private seal having no seal official seal at Pensacola this 31st day of March, A. D. 1873.

(Signed) F. E. de la RUA, [SEAL]
Keeper Spanish Archives of West Florida and Translator.

Filed Mch. 13, '97. (Signed) G. E. WENTWORTH,
Clerk.

And the said plaintiffs, to prove the issues in their behalf, then and there produced a witness, one A. V. CARO, who being being duly sworn, testified as follows:

Gabriel de Rivas left children: Paula Rivas, Anita Rivas Marusha Rivas.

The wife of Gabriel Rivas was named Maria Moreno Rivas; Maria Moreno was her name before she married him.

She was my grand mother; I think she left four children, there was a young Gabriel Rivas, I am positive of Paula Revas, and Marusha, and Learnada, and Gabriel, I don't know Marusha at all, only was told of her.

Paula Rivas married Joseph Caro, Learnada never married, I don't know if young Gabriel ever married, I don't know if he left any children, he is dead.

Marusha left one child, Cardita.

Joseph Caro and Paula Rivas left Matilda, Anita, Aquita and Josephine Caro, John B. Caro, Edward J. Caro, and myself, seven in all, I don't know if any died when they were young; two of my sisters died little.

Matilda married; I can't call her husband's name, he is dead.

Edward married a young lady in Mobile. He left three sons.

George got killed by the railroad, the other two were Willie and Eddie, left no daughters, had one but she died in infancy.

Lula Caro was the mother of Mrs. Florida McGuire, she

married John Lavelett; they had three children, Theodore, John and Florida.

Theodore and Florida are living in Mobile, John died at my house.

Florida McGuire is the great granddaughter of old man Gabriel de Rivas and his wife.

Matilda Caro is the daughter of John B. Caro, and is the great granddaughter of old man Gabriel de Rivas, I know her; she has been here, she lives at Riogrande, Texas. The first time I saw her was a few years ago, she and her brother came over here. Her father is dead; the mother of Mrs. McGuire is dead, her grandmother is dead, Joseph E. Caro is dead.

34 I have known the tract of land in controversy from boyhood, I was born in 1837 somewhere about 65 or 66 years ago.

All I know is, that my father claimed it for his wife, I recollect, my father used to send a drayman to the land when he wanted wood. I was quite a boy then, but I remember he used to haul wood out there for him, I recollect when I was a boy there was a good size house with a flat top, and a United States hospital there.

I cannot recollect of any of my family living on the land, but myself and my brother.

I lived there after 1869; I am still living there, since 1869 or '70. I am still living on the same tract, or a small portion of it.

I represented the interests of the heirs, I had the power of attorney from them.

The acts of ownership I performed for myself and the other heirs. I just controlled the whole tract; leased, rented and cut the wood that I wanted and like that, I have had considerable litigation about the tract.

Have had plenty of tenants on the tract; Mr. Fisher drove off a great many of these tenants; I don't know how many of the tenants are there now, I can hardly tell.

I believe Mr. Fisher took charge of it about 1887 or somewhere about then, he was appointed the receiver.

I took charge of the property in 1869 or '70, and I controlled the property, leased, collected the rents up to '79.

In the year 1879 I was enjoined by Judge Maxwell, and of course I then notified my people, then he exercised ownership and was agent for a while, I don't know whether he was enjoined or not.

Then in 1887 Mr. Fisher was appointed receiver, and he used the receivership as he saw fit.

Cross Examination.

I never did see Gabriel Rivas; I knew of the children that Gabriel Rivas and his wife had, by what I had been told by the old folks in the family.

Defendants object, and are sustained by the Court.

Q. Where did you first hear that the tract of land belonged to your family?

Defendants object, and are sustained by the Court.

35 Plaintiffs reserve the right to a bill of exceptions from ruling of the Court.

All I know is that my father claimed it for his wife; I recollect my father used to send a drayman to the land when he wanted wood. I was quite a boy then, but I remember he used to have wood cut there for him. I recollect when I was a boy there was a good size house with a flat top, and a United States hospital there. I cannot recollect of any of my family living on the land, but myself and my brother. I lived there after 1869. I am still living there since 1869 or '70. I am living on the same tract or a small part of it. I represented the interests of the heirs. I had the power of attorney from them. The act of ownership, I performed for myself and the other heirs. I just controlled the whole tract; leased, rented and cut the wood that I wanted, and like that, except shade trees. I have had considerable litigation about this tract. Have had plenty of tenants on the tract. Mr. Fisher drove off a great many of these tenants. I don't know how many of the old tenants are there now. I can hardly tell. I believe Mr. Fisher took charge of it about 1887 or somewhere about then. He was appointed the receiver. I took charge of the pro-erty in 1869 or '70, and I controlled the property; leased, collected the rents up to '79. In the year 1879 I was enjoined by Judge Maxwell, and of course, I then notified my people. Then he exercised ownership and was agent for a while. I don't know whether he was enjoined or not. Then in 1887 Mr. Fisher was appointed receiver, and he used the receivership as he saw fit.

Cross Examination.

I never did see Gabriel Rivas. I knew of the children Gabriel Rivas and his wife had by what I had been told by the old folks in the family. I don't recollect how my family undertook to tell me what children of Gabriel Rivas were living at the time Gabriel Rivas died. I mentioned Learnado Rivas, Paula Rivas, my mother, then there was one Marusha Rivas at the time he died. I can't answer the question if there

is another name for Marusha. I always heard her called Marusha. I don't know that it is a pet name in Spanish for Maria. I was told there was one called Gabriel. I don't remember when I was told that. I suppose about 40 years ago. I couldn't answer the question whether he had any other children surviving him besides those four. I couldn't answer correctly whether young Gabr*n*el Rivas died before he was of age or afterwards. I was told he died from spasms or fits;
36 he was young. I was told that he was unmarried. Marusha married, I am told, one De Moreno De Riera. She had one child named Cardita Riera. Cardita Riera married an uncle of mine, Ambrosa Caro. The name of the children, one was called Mary Caro, and Ardell. I believe that's all to the best of my recollection. I knew them but that's all, and I knew Cardita, but didn't know Ambrose. She is dead. He is dead. I saw Mary Caro about six years ago in Mobile. I have not seen or heard from her since. I don't know whether she is dead or alive. I believe Ardell Caro is dead. I am not positive, I believe she is. Learnado Rivas was an old man when I knew him. I knew him. I don't know if he left any children. I don't think he did. I don't know if he ever married. I believe he died a single man. I know old man Gabriel Rivas left children besides Paula and Marusha. Paula Rivas and Marusha Rivas were the only ones that left children. Of the children of old man Gabriel Rivas, there was Learnado and young Gabriel Rivas, that's what I can think of. Paula Rivas married my father, Joseph E. Caro. The children of Paula Rivas and Joseph E. Caro were Matilda, Irene, Eddie, Joe, Fabiano and one Aquita and Anita. If there is any more I can't think of them. Aquita and Anita died unmarried. Old man Joseph Caro married. There was one John B. Caro, he married in Texas. Fabiano married. E. J. Caro married. Eddie Caro and Matilda Caro married. Matilda Caro married a man named Duval. His given name was Philip. They had children, one was called Lydia, the other Octavia.

The boys, I can recollect Daniel, Gavin and William, Joe and Washington. I believe the children are all dead. But I will call the names so you can tell. Lydia was alive the last I heard of her. I heard from her about a week ago that she was alive. I think Octavia is alive. I think Daniel is dead, was married when he died, but he and his wife separated. Had one child named Gavin. He is dead. Left no children. I went to see William once in the asylum, he lost his mind. It strikes me he is dead, but I am not positive. I have not heard from him for a number of years. I think Joseph is alive. Washington is here in Pensacola, he's paralyzed. The last I heard of him he was

alive. My sister, Lulo Caro, married John Lavalett, and they had three children, John, Theodore and Florida. Theodore is in Mobile. E. J. Caro married and had three children, George, Willie and Eddie. George got killed. Train ran over him. Was married. Willie is engineer on the Louisville and Nashville Railroad. I believe Eddie is dead, haven't heard from him in nine or ten years. I don't know what has become of him.

37 I married Nancy Bryant. I married twice. Had six children by my first wife, two by my last wife. The names of my children by my first wife were Octavia, Georgiano, Theresa and Josephine and two boys. Names of boys were John B. and Albert, he is dead. That makes six. Two by my second wife; their names were Frank and Edward. Albert is not the only one dead, I am too far ahead, I lost a boy by the name of Josie. Albert was about 8 years old when he died. Josie was a little fellow when he died. Octavia married a young man by the name of Henry Thompson. He is dead. Georgiano married Harris of Apalachicola, Charles Harris I think. He is alive the last I heard from him. Theresa is in Apalachicola. She is married. I can't think of his name, kind of curious name. Josephine, she is single. She lives at my cousin's, Willie Caro, in Pensacola. John B. Caro is married. He is here too, and Frank. Children of my second wife are little fellows, they are at home. My sister, Irene, daughter of Joseph E. Caro, married Boykin Williams. They had children named Alexina, Idelio and Mary, that is all I can think of. Irene, my sister's daughter, is alive in Mobile. Boykin Williams is dead. One of the boys was named Augustus, he is dead. The other was named George Williams. I think he is alive. I believe Augustus died unmarried. Alexino is dead.

Q. Is Idelio alive?

Plaintiffs object as not being necessary to bring in all the family history.

Court: I don't yet see what bearing it may have, if when the testimony is closed, it is shown to be material, I don't object to taking it.

Witness: My sister Fabiano is dead. Died married to Victor Villar, only had one child, it died. My brother Joseph died married. He married a widow by the name of Deason. she was alive the last I heard of her. I don't exactly recollect their children. Frank, Eddie and Irene, a couple more, I can't think of their names. I went into possession of that tract of land in 1869 or '70. All I know is that my father claimed it, said it belonged to his wife. He never went into possession of it, that I know of. When I went into possession of it there

were two or three houses on it occupied by colored people. They were old man Bob Moreno, and a man by the name of Banks, and another man, I can't call his name now. I went into possession because I believed it was ours.

Q. Didn't you at that time take a deed from a man named Chobevo to that tract of land?

38 Plaintiffs object; which is overruled. They note exceptions.

I said last night that I took a deed for this tract of land, from one John Chebaux. I think the date of the deed was about 1870. I have seen the deed of late years. I have it. Your agent, George Brainard, represented himself to be an agent, and he told me he was going through New Orleans, and there was a man there by the name of Chebaux, and that he would be here, and would like for me to purchase his interests from him, and would leave the money for me. Mr. Brainard went off and left no money. I went to Mr. Brosnaham and he lent me fifty dollars, and he said fix it up some way and buy it in your own name.

Before I went to Brosnaham, this man Chebaux came inquiring for my father, I told him I had no money, and then I went to Brosnaham and got the fifty dollars from him, and gave him three notes, and I told him as soon as I could sell the property, I would pay him. Mr. Chebaux went over to Jacksonville and never returned, and that is the last of that one. I bought it in my own name because the doctor told me to buy it in my own name. He said he did not need the money. It was the same tract of land I said my father had been claiming, and to which I was an heir. The reason why I wanted to buy the claim of Chebaux, I thought by getting rid of that fellow, if he had any rights whatever, it would prevent trouble. I had never heard of him before that time. I was requested by Mr. Brainard to go to the Pensacola City Co. and buy it from them. He left me no money, otherwise I would have bought it for Mr. Brainard. About 1870 I commenced leasing. I had not made any leases before '70-'71. I had not leased any before that time that I can recollect of. I did not in the name of A. V. Caro, grantee of John Chebaux. I leased always as agents for the Rivas heirs. I am certain I believe I leased a couple of places as agent for John Brosnaham. I did not lease every place from 1870-'71 in the name of John Brosnaham. I've got the leases, I can produce them. I continued to lease up to '79 when the injunction was served on me. An injunction was served on me to stop leasing. My wife kept control of the property up to the time of her death. After '79 I did the leasing for her

to whoever she wanted to lease to. I was enjoined and my wife controlled it. Another injunction was instituted in '87 on Keyser, Wilkins, Runyan and E. J. Caro. After the time the injunction was served in 1887, I don't think there was any leasing done for any of the Rivas heirs. At the time I commenced leasing old man Ephrain was there. He was
39 already there. Old man Bob Moreno and a man named Banks. I can't recollect of anybody else. They were not holding as tenants of the Pensacola City Co. at the time I took possession. Old man Bob Moreno, they took charge of it as government property, and would enter some portion of it for a homestead. I told them the property belonged to my grandfather. I built a house when I first took charge.

The Pensacola City Co. nor persons at the instance of the Pensacola City Co. were leasing to persons that tract of land during the time I was leasing there. After I made myself known to old man Ephraim, old man Bob, and the man called Banks, they took a lease from my wife, and old man Moreno found out from a lawyer, that it was not government property and moved off, I don't know where. Ephraim was the only one I know of that was leasing from the Pensacola City Co. He obtained a lease from your father, I believe, I don't know whether your father was representing the Pensacola City Co. or not.

My wife kept on leasing after I was enjoined from '79 to '87. Old man Ephraim is the only one I can think of holding a lease from another person besides from me or my wife.

I know Charles Hooper, he was there, he went there with shotguns, he stayed there.

Thereupon counsel for defendants propounded the following question to witness, to-wit:

Q. The Rivas heirs brought suit against him, that failed did it not?

A. I can't say exactly how it stands, the suit was never settled.

Q. Did that suit fail?

Thereupon plaintiffs' counsel objected, on the grounds that the record is the best evidence.

But the said Judge did then and there deliver his opinion, and overruled plaintiffs' objection.

And the said plaintiffs by their attorneys, did then and there except.

And this constitutes plaintiffs' second exception.

I think it was continued on account of material papers being lost; I think the depositions in the case, Mr. Hooper was

never put off that tract of land, by myself or the Rivas heirs, I could not say how long he stayed there; the suit against Hooper was in ejectment. Brought suit about five or six years ago against the Pensacola City Co. Judge Creen
40 was attorney in favor of Theodore Lavelett, and that failed on account of the papers being lost; they came from New Orleans here and were lost, and the case still remains there, the papers were mislaid or lost; I heard no more of it. My father died one year before the war, 1860. He was keeper of the Spanish archives and was a notary or justice of the peace I think; he was born during the Spanish times, he was quite a Spanish scholar.

My father always claimed the property for his wife; I went there in 1869, part of the time I was away on some business, from the time of my father's death until after the war, I was not the agent of the Pensacola City Co. I was just employed by Mr. Brainard to keep off trespassers off the Shackleford tract and look out for the Belmont place up there.

Mr. Brainard was the agent of the Pensacola City Co.

Defendants' counsel propounds the following question to witness:

Q. After the war, did you not sue the Pensacola City Co., or the trustees of the Pensacola City Co., for wages for looking after all of their lands and lots in the City of Pensacola?

Plaintiffs object, on the grounds that the record of that suit would be the best evidence.

Defendants offer record in the case of A. V. Caro *vs.* Samuel Joudon and Nathaniel Thurston, trustees of the Pensacola City Co., in the Circuit Court of the State of Florida, First Judicial Circuit of Escambia County.

Also offer the testimony of A. V. Caro taken in the case.

Plaintiffs, by their counsel, did then and there object to the documents offered, on the grounds that no reference to this Gabriel Rivas tract of land is made whatever, in said documents.

And the said Judge did then and there overrule plaintiffs' objections.

To which ruling of the Court, the plaintiffs by their counsel did then and there except.

And this constitutes the plaintiffs' 2nd exception.

Which documents above named are set out in words and figures as follows:

41 Defendants offer suit, A. V. Caro *vs.* Booth, Jaudon and Thurston, trustees, Pensacola City Co.

Exhibit "2."

STATE OF FLORIDA,
Escambia County.

The Clerk of the Circuit Court of the County and State aforesaid will please issue a writ of assumpsit in favor of Albert V. Caro against William A. Booth, Samuel Jaudon & Nathaniel Thornton, trustees of the Pensacola City Co. Damages, two thousand dollars.

E. W. CULLON,
Plaintiff's Attorney.

Pensacola, Fla., 25th August, 1868.

Filed August 26th, 1868, and writ paid same day.
F. E. De La RUA, *Clerk of the Court.*

In Circuit Court for Escambia County, Florida.
Spring Term, 1869.

A. V. CARO
vs.
BOOTH, JORDAN & THORNTON, Trustees of the Pensacola City Co.

To the Clerk of the Circuit Court: You will please issue subpoena for George W. Caro & Philip A. Caro to testify in behalf of the plaintiffs in said case.

E. W. CULLON,
Plaintiffs Atty.

Pensacola, 3rd April, 1869.

Filed Apr. 3rd, 1869.

R. F. STEARNS,
Clerk.

STATE OF FLORIDA,
Escambia County.

In Circuit Court, for Escambia County Florida.
To the Circuit Clerk: In the case of A. V. Caro by Booth, Jaudon and Thurston, trustees of the Pensacola City Co., please issue a subpoena for A. Gerard, George S. Wall to testify in behalf of plaintiffs.

E. W. CULLON,
Plaintiffs Atty.

Filed Apr. 7th, 1869.

R. F. STEARNS,
Clerk.

THE STATE OF FLORIDA,

To the Sheriff of Escambia County.

We command you that you summon Wm. A. Booth, Samuel Jaudon and Nathaniel Thurston, trustees of the Pensacola City Company, to appear before the Hon. the Circuit
42 Court, of Escambia County, State of Florida at a Court to be holden at the Court Courthouse in the City of Pensacola for the County aforesaid on the second Monday after the 4th Monday in November next to answer Albert V. Caro of a plea in assumpsit, damages p. 2000.

Herein fail not and have you there and then this writ and make known how you have executed the same.

Witness F. E. De La Rua, Clerk of and for said Court at the Courthouse aforesaid. This 26th day of August, A. D. 1868.

F. E. DE LA RUA,
Clerk of the Court.

Filed and writ spread, August 26th, 1868. Service accepted.

A. C. BLOUNT,
Attorney for Defendant.

"Copy."

STATE OF FLORIDA,
Escambia County.

To all and singular the Sheriffs of the State of Florida, Greeting: We command you, that you summon Alonzo Gerard and Geo. S. Wells to appear before the Honorable the Judge of our Circuit Court, for the county of Escambia, First Judicial Circuit of Florida, at a Court to be holden at the Courthouse, in the City of Pensacola, forthwith—to testify and the truth to say on behalf of A. V. Caro in a certain case, in our said Court, before the said Judge, depending and undetermined between A. V. Caro, plaintiff, and Samuel Jaudon and Thurston, trustees &c., defendants, and this shall he in no wise omit, under the penalty of the law, and have you then and there this writ.

Witness R. A. Stearns, Clerk of our said Court, at the Courthouse aforesaid, this 7th day of April, A. D. 1869.

(Signed) R. E. STEARNS,
Clerk of the Circuit Court.

STATE OF FLORIDA,
Escambia County.

To all and singular the Sheriffs of the State of Florida, Greeting: We command that you summon Alonzo Gerard, Geo. S. Wells, to appear before the Honorable the Judge of our Circuit Court, for the County of Escambia, First Judicial Circuit of Florida, at a Court to be holden at the Courthouse in the City of Pensacola, forthwith, to testify and the truth to say on behalf of A. V. Caro, in a certain case in our said Court, before the said Judge, depending and undetermined between A. V. Caro, plaintiff, and Samuel Jaudon and Thurston
43 trustees, etc., defendants, and this he shall in no wise omit, under penalty of the law, and have you then and there this writ.

Witness, R. A. Stearns, Clerk of our said Court, at the Courthouse aforesaid, this 7th day of April, A. D. 1869.

R. A. STEARNS,
Clerk of the Circuit Court.

Issued April 7th, 1869.

R. A. STEARNS, *Clerk.*

Executed by copies to George S. Wells and A. Gerard, this 7th day of April, 1869.

HARRY C. CAMPBELL, *Sheriff.*

STATE OF FLORIDA,
Escambia County.

To all and singular the sheriffs of the State of Florida, Greeting. We command you, that you summon George W. Caro and Phillip A. Caro, to appear before the Honorable the Judge of our Circuit Court for the County of Escambia, First Judicial Circuit of Florida, at a Court to be holden at the Courthouse, in the City of Pensacola, first Monday in April (5th day) 1869, to testify and the truth to say on behalf of A. V. Caro in a certain case in our said court, depending and undetermined between A. V. Caro, plaintiff, and trustees of Pensacola City Company, defendants, and this shall he in no wise omit, under penalty of the law, and have you then and there this writ.

Witness, R. A. Stearns, Clerk of our said Court. At the Courthouse aforesaid, this 3rd day of April, A. D. 1869.

R. A. STEARNS,
Clerk of the Circuit Court.

Issued Apr. 3rd, 1869.

R. A. STEARNS, *Clerk.*

Executed by copy to P. A. Caro, this 3rd day of April, 1869, also by copy to G. W. Caro, this 6th day of April, 1869.

HARRY C. CAMPBELL, *Sheriff.*

In Circuit Court, for Escambia County, Florida.
Spring Term, 1869.

STATE OF FLORIDA,
Escambia County.

To the Hon. Homer C. D'Lanty, Judge of the Western Judicial Circuit, holding Court in and for said County:

Albert V. Caro, a citizen of said County and State, complaining of William A. Booth, Samuel Jaudon, and Nathaniel Thurston, trustees of the Pensacola City Company, and a citizen of the City and State of New York, who have been summoned upon a plea upon promising, etc.

For that heretofore, to-wit: in the County aforesaid,
44 on the 9th day of September, A. D. 1865, said defendants were indebted to said plaintiff in the sum of eleven hundred and seventy-five dollars besides interest for watching, taking care of and attending to the landed interest in the City of Pensacola consisting of lots of lands, and County aforesaid, of said defendants, as well as taking care of, preserving and preparing a box containing valuable books and papers, belonging to said defendants from the ninth day of May, A. D. 1862, until the 9th, day of September, A. D. 1865, for which said defendants agreed to pay to said plaintiff thirty dollars per month, for his said plaintiff's care, labor and expenses in taking care of, watching and preserving the aforesaid property during said three years and four months, making the amount due from said defendants to plaintiff twelve hundred dollars, of which amount said plaintiff received from said defendants twenty-five dollars, leaving said sum of eleven hundred and seventy-five dollars, owing to and unpaid to said plaintiff, besides interest on the same, and which said sum of money plaintiff has frequently demanded payment of, and which said defendants have promised to pay plaintiff in consideration of said labor, expense care of said defendants' property, books, papers, etc., yet the said defendants have never paid the said money so due to said plaintiff, although often requested to do so, but have hitherto wholly failed and neglected, and still fail, neglect and refuse to pay the same to plaintiff's damage two thousand dollars, whereof suit is brought and judgment asked for said sum of eleven hundred and seventy-five dollars, with interest, cost, etc.

E. W. CULLON,
Plaintiff's Atty.

"Account or Cause of Action"—Messrs. William A. Booth, Samuel Jaudon and Nathaniel Thurston, Trustees of the Pensacola City Co.

To Albert V. Caro, Dr.

From 9th May, 1862, until 9th of September, 1865, making 3 Years and 4 Months, at $30.00 per Month:

For the care, labor, trouble and expense for watch, taking care of lots in City of Pensacola, as well as a box containing books and valuable papers, from 9th of May, 1862, to the 9th of September, 1865, inclusive, at $30.00 per month, making $1200.00
Less Cash 25.00

Amount due besides interest..... $1175.00

45 Filed April 6th, 1869.

R. A. STEARNS, *Clerk.*

We, the jury, find for the plaintiff in the sum of $600.00.

STATE OF FLORIDA,
Escambia County.

Circuit Court, April Term, 1869.

A. V. CARO
vs. Assumpsit.
WILLIAM A. BOOTH and Others.

The defendants, by their attorneys, Jordan & Blount, come into Court and defend the wrong and injury, whence and for plea say, they did not assume promise nor undertake in manner and form as alleged by the plaintiff in his said declaration, and of this they put themselves upon the country.

BLOUNT & JORDAN,
Attys. for the Defendant.

Filed Apr. 13th.

R. A. STEARNS, *Clerk.*

Escambia County, Circuit Court.

April 16th, 1869.

A. V. CARO
vs. Assumpsit.
TRUSTEES OF THE PENSACOLA CITY COMPANY.

ALBERT V. CARO, witness for the plaintiff:

Previous to the war, I was employed by Mr. Geo. Brainard, and what work I did previous to the war, I was to attend to the lands when the war was about to break out, Major Chase discharged me, was out of employ, when Brainard left told witness he would see me paid for all services rendered thereafter. Brainard left upon the arrival of the first Confederate troops, at the time the Confederates were here, I could not do anything excepting watching the lands, Brainard acted as agent for the company and was so recognized by the community, when the Federal troops came, there gun boat came in first, then I could watch over the land and would report trespassers to the Provert Martial, frequently, fifty different times, did all I could to protect the property when the Federals evacuated. John B. Cormly was the mayor
46 of the city and papers, maps and books, belonging to the Pensacola City Company as well as some law books, I told Mr. Cormly here is the valuable books, papers, &c., belonging to the City Co. that I had been taking care of, everything that belongs to them, and took them to the navy yard and put them in the marine barracks by permission of Shuttleworth to be taken care of and preserved, and then got my cousin, Mr. Caro, to write for me to Mr. Brainard, in the course of time, we got a letter from Mr. Brainard, he was very glad to hear that I could take care of the things and so forth and so on, and I wrote again asking assistance from Brainard, he wrote back to send the books, papers and everything to New York directing me how to do it. I wrote back to him I could not send them to him unless he sent the money, and he wrote another letter answering this one stating to send the books, papers, and the company authorized him to give me some lots to build a comfortable house on, and also to make out my bill and send it. Cousin George made out the bill at $30 per month, amounting to $1200.00, and he sent it on to Mr. Brainard, New York, care of Sam'l Jaudon, No. 37 William street, he wrote back sending twenty-five dollars on account, it was a heavy bill and when their trouble was over they would settle the amount. Brainard got the books from

my uncle, two or three days back; Brainard proposed to let me have two lots and pay the costs of the suit, never had any question as to my being employed, the only question was only as to the bill, left the books and papers with Mr. Caro to deliver them when called for by Mr. Brainard.

Cross Examination.

Was here and at the navy yard, took care of the land whilst here, asked soldiers not to cut the wood, and went to provost martial to prevent them, don't know the exact date when Brainard left here, I believe Young mentioned to me had no further use for me, the office was the law office of Jordan & Blount, the war was going on, could not pay any men to take care of anything. Cormly, the mayor, had taken charge of the office, when I took care of the paper, was in Fort Pickens two or three months, I was at the navy yard nearly three years. Was watchman at the time, I got paid for what I done at the yard. From Ft. Pickens I went to Baldwin County, Alabama. When Brainard returned here in '66, I was in Baldwin County with Maj. Harris, he got the papers from my uncle when they expected the marines at the yard removed the books. In conversation with Brainard he said he had made arrangements with the company to give me
47 two lots, they said it was all I could have and I said I was entitled to the amount of my bill.

A. V. CARO.

GEORGE W. CARO, for the plaintiffs:

The only service I know he rendered, he had some books which he was taking care of for the company. The first I knew of it was when the Federals occupied Pensacola, April or May, 1862. Our law officer packed the books and papers in boxes, when the troops went to the navy yard he took the box with him, and by his request I wrote letters to Mr. Brainard for him, he received a letter from Mr. Brainard with $25. I did not see the money that was in the letter, I made out a bill for him of about $1200.00, and sent the bill, I think, to New York City Company. Mr. Brainard wrote to him to ship the books.

GEORGE W. CARO.

PHILLIP A. CARO, for plaintiffs:

At the evacution of Pensacola, 19th of March, 1863, at that time the mayor and alderman occupied the little office, which Mr. Blount occupied before the war. After we were at the navy yard, some time after Col. Shuttleworth said to me that

they were a box of books and probably valuable papers, which Albert V. Caro had put under his care like, and requested me to see him or to take charge of them as he was order away and they might be useful to somebody, then Albert took the books and papers whatever they were I did not examine them, and brought them to my house for safe keeping, they were kept there in two small boxes, until Mr. Brainard came back and at his request, I sent them the two small boxes here at Mr. James Knowles store, Mr. Brainard was agent of the Pensacola City Co., Mr. Brainard said he would pay the expenses, he asked me what was the expenses, I did not ask anything for taking care of the books. Mr. Brainard said to me that if Caro would drop the suit, he would give his wife two lots, as he did not think it would do him any good at all.

Cross Examination.

The books and papers went down a public steamer.

PHILLIP A. CARO.

GEORGE BRAINARD, for defendants:

I was employed as agent of the Pensacola City Co., came here and found they were cutting growth and carrying off sand from company property, and at the request of Maj. Chase in 1859, I employed Albert V. Caro to try and prevent
48 the cutting of the growth on the land and hauling off sand, I think I employed him first of May, '59, I discharged him the fourth of Feb., '60, at a salary of $30.00 per month, which I fully paid him, he was not employed by me or any one as agent of the company, not to my knowledge since that time, during the fall or winter of '60 or spring of '61, I let him move into a small house which the company owned in back of the graveyard, and he was unable to pay any rent, so I told him if he could prevent any person from cutting timber on any land as remuneration, to do so, as he was unable to pay any rent. It became very troublesome at times here, the state seceded in Jan'y, 1861, feeling unable to do anything here on account of troublesome times, I left in May, 1861. I did not employ Caro as agent before leaving here, at the direction of Maj. Chase, one of the trustees of the company, I turned over to Mr. Blount all the books and papers of the company. On reaching north, I found my salary had been discontinued, I resigned my agency on the 1st of Jany. following, I was not the agent when I received some letters from Albert V. Caro stating that he had saved some books, papers and etc., the description of the papers was so indefinite, I could not make out what papers he had

saved, or the value of them, I submitted the matter to the trustees at New York, not as their agent, but as the agent of Mr. Caro. Caro represented he was very poor, at my request one of the trustees advanced twenty-five dollars. I requested Mr. Caro to send on the books and papers, which he refused to do. Did not consider the company was in his debt, but would out of sympathy select two lots and give him a home for him and his family, that if he would dismiss the suit, I would try and carry out the agreement, I never told Caro when I left here that I would see him paid.

GEORGE BRAINARD.

Col. A. C. Blount was employed as an attorney for the company at the secession. I considered my agency at an end, left copies of papers of the company and maps in the office, they were of no value only as copies, the original being in New York, all other papers of value I took with me.

AL. C. BLOUNT.

PHILLIP A. CARO:

I don't know what value Mr. Brainard put upon the papers, Brainard appeared anxious to get them, he said they were very important to the company.

PHILLIP A. CARO.

49

STATE OF FLORIDA,
County of Escambia.

J. M. P. Di Rioboo, a known deputy to the Clerk of the Circuit Court for the First Judicial Circuit for the State of Florida, in and for Escambia County, to certify, that the foregoing evidence in the suit between Albert V. Caro, plaintiff, and the trustees of the Pensacola City Co. was . . . . (could not be read by writer) in the presence of the Court and filed in the office of the Clerk with the papers in his care.

Given under my hand at Pensacola, this Apr. 16th, '69.

M. P. Di RIOBOO,
Deputy Clerk.

Filed April 16th, 1869.

J. MP. Di RIOBOO,
Deputy Clerk.

A. V. CARO
vs. Assumpsit.
PENSACOLA CITY CO.

Alonzo Gerard offered and proved the following: Account for services as interest in the above case. To two days' at-

tendance at Court at 75c., $1.50. Sworn to and subscribed before me this 5th day of April, 1869.

R. A. STEARNS,
Clerk of the Court.

CARO
vs.
PENSACOLA CITY CO.

Charge to the Jury.

This is an action brought to recover the value of services alleged to have been rendered to defendants by plaintiffs under a contract with their agent, if you believe from the evidence that the plaintiff was employed by the authorized agent of Defts., and that he performed the services incident to such employment, then you will find for the plaintiff at the rate agreed by the contract between the parties, or in the absence of such contract according to their value, if you believe from the evidence that the plaintiff was employed by an authorized person to render specific services to the Defts., and that the Defts. afterwards with knowledge of the contract ratified the action of such employer and paid plaintiff a sum on account of said contract, you will still find for plaintiff as before stated, if however the Defts. never themselves or by
50 an agent made a contract with plaintiff as alleged or if plaintiff failed to render services in accordance with the contract or terms of employment, then you will find for the Defts. You are the judges of the testimony, and must find according to its might, and if you believe services were gratitiously rendered without the request of the Defts. or their agent and not under any contract, and that defendants have never since undertaken to pay for such services, then you will find for the defendants.

Filed April 16th, 1869.

If Brainard as agent of the Pensacola City Co., being requested by letter to act for Caro, does so, and received $25, which is accepted by Caro, the Pensacola Co. is bound by the act of its agent, Brainard, and is stopped from making a further demand.

2nd. To constitute a binding contract, there must be a definite promise by the party charged, accepted by the person claiming the benefit of such promise, there must be a request on one side and an assent on the other.

Filed April 16th, 1869.

If the plaintiffs, Caro, was discharged by the trustees and agent of the Pensacola City Co., and was not afterwards em-

ployed by these parties, he can make no charge for services rendered as agent or employe, without a further agreement on their part so to employ him.

Filed April 16th, 1869.

Escambia Circuit Court.

CARO
vs.
PENSCALOA CITY COMPANY.

A motion for a new trial herein having been duly entered at the spring term, 1869, and the Court having held the same under advisement, it is now considered by the Court that said motion be sustained and that a new trial be granted.

Feby. 7th, 1869.

HOMER G. PLANTS, *Judge.*

A. V. CARO
vs.
PENSACOLA CITY CO.

Upon motion for new trial.

By request of E. W. Cullen, I hereby dismiss this
51 case, the defendants agreeing to pay the costs, having settled the same this day.

A. V. CARO.

Pensacola, July 8th, '69.

Know all men by these presents, that we, Morris Robinson, Charles A. Davis and Samuel Jaudon, trustees of the Pensacola City Co., for and in consideration of the sum of twelve hundred and fifty dollars, to us in hand paid by Henry Ahrens, the receipt whereof, we do hereby acknowledge, have bargained and sold, and by these presents do bargain and sell and convey unto the said Henry Ahrens, his heirs and assigns forever, lots numbered one, two, three, four and five in square three hundred and eighteen in the plan of the New City of Pensacola surveyed by Geo. E. Chase in the year one thousand eight hundred and thirty-five and six, with all the appurtenances, and all the right, title, interest, claim and demands of the said Pensacola City Co. in the premises (being the same premises which W. B. Taylor, attorney for William H. Chase, trustee of the Pensacola Land Co., by indenture dated the .... day of February, one thousand eight hundred and forty-two, and recorded at Pensacola in book ...., page

...., did grant and convey unto the said Morris Robinson, Charles A. Davis and Samuel Jaudon, trustees of the Pensacola City Co., their successors and assigns forever): To have and to hold the same unto the said Henry Ahrens, his heirs and assigns in fee simple forever. And we, the said Morris Robinson, Charles A. Davis and Samuel Jaudon, trustees as aforesaid of the Pensacola City Co., do hereby covenant and agree to and with the said Henry Ahrens, his heirs, administrators, executors and assigns, that we will warrant and defend the premises with the appurtenances unto the said Henry Ahrens, his heirs and assigns forever.

In testimony whereof, we, the said Morris Robinson, Charles A. Davis and Samuel Jaudon, trustees of the Pensacola City Co., have hereunto set our hands and seals at Pensacola this third day of April, in the year one thousand eight hundred and forty-two.

[SEAL] MORRIS ROBINSON, *Trustee.*
By Atty. S. W. TAYLOR,
[SEAL] CHAS. A. DAVIS, *Trustee,*
By His Atty. S. W. TAYLOR,
[SEAL] SAM'L JAUDON, *Trustee,*
By His Atty. S. W. TAYLOR.

Sealed and delivered in presence of:
HENRY HYER,
W. B. TAYLOR.

52 TERRITORY OF FLORIDA,
Escambia County.

This day Henry Hyer personally appeared before me, M. Crupper, Clerk of Court of the county aforesaid, and made oath in due form of law that Samuel W. Taylor, attorney of Morris Robinson, Charles A. Davis and Samuel Jaudon, acknowledged the execution of the foregoing instrument of writing, for the uses and purposes therein mentioned.

Given under my hand at Pensacola this 2nd day of November, A. D. 1842.

M. CRUPPER, *Clerk.*

Witness: I said I looked after the Shackleford and Belmont. I heard my father speak about the Rivas tract and claimed it for my mother and said it was on Bayou Texar. I don't remember if he said that the Pensacola City Co. had no control over it. Your father was the attorney for the Pensacola City Co. Your father as the attorney for the Pensacola City Co. told me to look after the Belmont and Shackleford

tracts, while Mr. Brainard told me. He did tell me. I asked him how far was my jurisdiction. I don't believe that I asked him, while I was agent if I should go on the Chebaux tract. That was in '60 or '61 just when the first troops came here somewhere about that time. I cannot say the exact time at all. If I said at that time I did not know where the Chebaux tract was located, I may have made a mistake, I did not know the exact location only by Bayou Texar, and the Rivas tract my father spoke of, but I've been over it thousands of times before the war. I talked with Wm. J. Kelly, R. A. Campbell, Dr. Brosnaham, Judge Cullen and several. About '69 or '70 Campbell showed me where the tract was. I said my father always claimed that tract of land for his wife. I knew that he claimed it in 1848 or somewhere about that time. I was then about thirteen years old, I suppose, I am not certain about the exact age. I don't know if my father paid taxes during all of that time. I can't say whether he did or not, I paid no attention to it at all. I heard him say that he had a claim. I went to give it in once for taxes, and Wm. Putnam, I believe he was tax collector or assessor, said that Wm. Knowles or somebody had already given it in, but if I felt disposed I could give it, and he would collect from both of us. I went to Mr. Campbell and asked him about it, and he said that's all right, let him pay it, and you keep your property and live there. I did not go any more nor pay any taxes during period mentioned. I did not and don't know of any of the Rivas heirs paying any taxes on it. From '69 or '70, when I took charge, I don't know who has been
53 paying taxes on it, it's been in controversy all the time, I don't know. I said I built a house on that tract of land, I lived in that house until it became dilapidated; I then moved and have been living in a little brick house. I think I moved in '71, I don't know exactly when. About '71 I moved into the little brick house. The place I moved on when I went there was not sold to J. C. Petterson; where Fulton built the new house now. I think Mr. Fisher sold him the land. I remained there about a year, and we had a heavy blow which took the roof off. That little brick house on the hill was where I remained 15 or 20 years. The house I first moved to is destroyed. I am living now right on the bay site north of it. I did not go on the place I live now on an agreement with Mr. Fisher. A small portion of the place where I am living now is known as the Petterson place. I bought it from J. C. Petterson. There was a big box of the papers in my possession of the books, papers and maps of the Pensacola City Co., I filed in your father's office with what maps there were. I

don't know how many maps there were, I did not have any time to look at maps in those days. It was too hot around here. Mr. Blount shows maps to witness. Witness: That may have been one of the maps I took care of for the Pensacola City Co., but I don't know, there were a good many maps. I don't know if I did have it. I knew the boundaries of the tract of land I was to look out for by the directions of Mr. Brainard. I took no map, I heard of a map called the George E. Chase map. I can't tell if that was one of the maps I had charge of. It was too much excitement; it was war times, and I just packed them up as rapidly as I could, and took them on to the navy yard. I know Richard Watkins and Lousia Watkins, they have lived on the Rivas tract for the last 17 or 18 years. They took charge of my old tenant house, I think they hired the place to Watkins. Mr. Tate put my old tenant out, and I think Mr. Tate put Watkins in my old tenant, Alfred Daniels, house. Daniels was my first tenant. Watkins is there now, he never paid me anything, I never called on him for anything, but Tate put my old tenant Daniels out. I know Willie Simmons, I can't say whether he was my tenant or not. He got in one of the houses the same way as Watkins did. I don't know that I had a tenant in one of the Tate houses and that Tate put him out, and put Simmons in. Simmons has been there ever since my tenant was put out, he is there now, I can't say whether he is my tenant or not, he seems to recognize me, he has not paid me any rent.

54 I don't know since he went in under Col. Tate that he paid an old agent by the name of Clipper.

I understood it that I testified just now that Alfred Daniels was my tenant and that Col. Tate put him out, and put Watkins in that how came Daniels out.

When I put in Daniels I think Daniels built the house.

Adam Lennox did not build the house on that spot, I think Daniels built it, I am not positive about Lennox, I heard him say he built it.

When I found a man in possession of any portion of that tract of land, holding under anybody else but the Rivas heirs, I made myself known to them, one of them, Bob Moreno, and this man Banks and they moved off. The other places I did make a practice whenever I found anybody on it, holding under the Pensacola City Co., to go to the tenants, and get them to acknowledge me as a Rivas heir, and their land holder. I told them I was the owner.

The only house I built was the one I built for myself. They built their own houses. The last I had, I have not kept any

improvements on that land, except the house I built for myself.

The rents were very small and I used it, I was very lenient with the tenants as they were very old. There was an old man by the name of Clipper, as soon as we found out all of the decrees and judgments made by the judges, our counsel made Clipper take charge of the property, and let him have the rent cheaper. I understood my father to claim this tract of land for my mother as an heir of Gabriel Rivas. Always spoke of it in that way, probably the subject would not come up in years, he used to talk to Moreno about it, they are dead now.

I believe my father to be a truthful man.

Defendants, by their counsel, presents to witness an abstract of claims, which purports to be in the handwriting of witness' father, and asked the following question: "Look at this and tell me whether you recognize the handwriting?"

Witness: It looks like it with the exception of the spelling.

Defendants, by their counsel, offered in evidence abstract of claims purporting to be in the handwriting of Caro's father.

And thereupon plaintiffs, by their counsel, did then and there object.

Whereupon the said Judge did then and there ex-
55 press his opinion and overrule plaintiffs' objections in words and figures as follows:

"It seems to the Court, that it is admissible in this way: The witness has said repeatedly that his father always claimed this property for his mother; that he never heard of any other claim, that he claimed it not every day, sometimes a year or more apart; but a good many times claimed always this property, up to the time of his death.

The counsel seeks to present to this witness a statement made by the father in regard to this property. If the paper contains any statement that would vary or contradict this witness' testimony, I think it would be admissible for that purpose. When a paper goes into evidence for any purpose, it is very difficult to hold counsel to what particular purpose they purpose to put it. I apprehend that it is not such title that bears such dignity, as an assertion in a file of record as a part of such record, but this witness to maintain the claim of the plaintiffs here has repeated the assertion that his father always claimed this through his mother.

I think the counsel seeks properly to refute this statement. The counsel objects to the use of this document for any pur-

pose than for the purpose, examining the witness on the stand as to the former statement of the; but objects to this document for the purpose of proving this title to any party.

The paper is admitted for the purpose the counsel seeks to use it, and should the counsel wish to use it for any other purpose, I will hear the argument on that question when we reach it.

The Court understands the rulings thus far (I don't know what is in the paper), but I apprehend that the purpose in reading it was to contradict the memory and statement of the witness, that the father did at some time make a claim for lands he did not claim, or something like that, the Court rules that the paper is admissible for this purpose.

Plaintiffs, by their counsel, object to the reading of the paper to the jury, for the purpose of proving title.

The Court—(To Mr. Blount, counsel for defendants,): The Court understands the gentleman to say he purposed to read it to the jury.

Whereupon counsel for defendant informs the jury that the paper came from the keeper of the archives of West Florida, Joseph Caro, and is an abstract of title, dated December 23rd, 1835.

Which document is set out in words and figures as follows, and marked Exhibit "A:"

56 *Exhibit* "3."

Offer by defendants.

An abstract of claims to lands in West Florida, founded on original grants and which have been confirmed as appears on file in the office of the public archives, to-wit:

Plat "A", this is a grant for three hundred arpens of land made to Gabriel Rivas by the intendant general of the province of West Florida, John Venturo Morales bearing date 10th day of November, in the year 1806.

The said tract was sold at public auction by order of the Spanish tribunal in order to settle the estate of the said Gabriel Rivas, by a judicial act of sale bearing date 20th of October, in the year 1817, and purchased by Gregorio Caro for the sum of five hundred and seventy-two dollars.

The said Gregorio Caro conveyed the above tract of land to James Fitzsimmons, Samuel M. Smyth and John Chabeaux, by an act of sale duly authenticated bearing date 22nd day of October, in the year 1817.

James Fitzsimmons conveyed to Cirelo De Morant as the attorney in fact of John Chaleaux the undivided third part

of the tract of land above mentioned by an act of sale duly authenticated bearing date 22nd day of November, in the year one thousand eight hundred and nineteen.

To lot "B," this is a grant for eight hundred arpens of land, made to Frances Mareno by Governor Masot, by a decree bearing date 21st day of October, in the year 1817.

Frances Moreno conveyed the said tract to Antonio Coleman by an act of sale duly authenticated bearing date 9th, same in the year 1821, the said Moreno having reserved to himself two arpens, both fronting on the Bay.

The said Antonio Coleman conveyed the above tract, containing seven hundred and ninety-eight arpens, to Nathan Shackelford by an act of sale duly authenticated bearing date 11th day of same, in the year 1821.

Frances Morena sold to John Chabeaux one of the arpens, reserved as above and is situated between the Bavou, Cadits, and land of Shackelford fronting on the Bay as appears by the act of sale bearing date the 4th of August, 1821.

I, Joseph E. Caro, keeper of the public archives of West Florida, duly qualified and commissioned by the President of the United States of America:

57 Do hereby certify that the plats "A" and "B", are true and correct copies taken from the records containing same on file in my office and further that the foregoing abstract is also taken from the record now on file in my office having relation to the two tracts of land above mentioned.

In testimony whereof, I have hereunto set my hand and affixed my seal of office at Pensacola, December 23rd, 1835.

[SEAL] JOSEPH E. CARO,

Keeper Public Archieves West Florida.

I think Mr. Fisher was appointed receiver about 1887.

All of my tenants are there on the Rivas tract of land in possession since Mr. Fisher's appointment.

They paid me rent until '79', then the injunction came out; I think the second injunction came in '87.'

Mr. Ahrens was agent, and then Mr. Fisher came as receiver.

Q. Have you or any of the Rivas heirs ever been in possession of that tract of land since he was appointed receiver in '87?'

A. I am in pos-ession of it.

There has not been any other of the Rivas heirs on the land, since Mr. Fisher's appointment.

I don't know the number of the lot and block, I occupy, I just leased to my tenants on the Rivas tract, that's all.

(Re-Direct Examination.)

The conditions around Pensacola during the war between 1860 and 70 were dangerous, I was over at the navy yard, myself.

They cut some trees down, and made some entrenchments.

There were no marks or street on the Rivas tract, during the war in 60 or 70, that I know of.

There were no mark of streets on the tract before I went that I know of.

I think there must have been some opening of streets made about 1873, I don't remember exactly when. It all grew up in undergrowth.

Judge Maxwell was Judge when I was enjoined in 1879. I found out since that Judge Maxwell was interested or related to parties interested in that suit.

He was president of the Pensacola City Co., and he acted as judge in his own case.

58 The first information that I got that he was interested was that he was president of the Pensacola City, Co., he sat on the case.

Judge McLellan was the judge who decided the case in 1887.

From what I can learn he was related to a party in the case, and that party was Col. Younge from what I have learned, Col. Younge was interested, he was attorney; I couldn't say that Col. Younge had any personal interest in the case; I know that C. C. Younge, Sr., was the plaintiff in the suit.

This was the Younge that was related to Judge McLellan, brother-in-law I think, I am not very familiar with the whole family.

Plaintiffs by their counsel offer in evidence certified copy of bill of complaint in the suit of W. H. Davidson *et als.* against E. J. Caro, *et al.*, in the First Judicial Circuit of the State of Florida, Escambia County, Circuit Court, for the purpose of showing relationship to plaintiff in suit and proving disqualification of Judge McLellan.

Which bill of complaint is set out in words and figures as follows:

Exhibit "C."

To the Hon. James F. McLellan, Judge of the Circuit Court of the First Judicial Circuit of the State of Florida, in and for the County of Escambia, in Chancery, sitting:

The bill of complaint of W. H. Davidson, Walter Tate, personally and as admr. of Sally L. Tate, dec'd; Peter Knowles,

C. C. Yonge, Sr., Louis Boley, Pensacola and Atlantic R. R. Co., a corporation of Florida, A. V. Clubbs, W. B. Chipley, E. A. Perry, and C. B. Parkhill and Thomas C. Watson, who are citizens and residents of Pensacola, Fla., Alexander Stoddart, N. Thurston, Fannie E. H. Haines, Electra B. Richards, Josephine C. W. Terry, Van Brugh Livingston, and Alicia R. Booth, Wm. M. Booth, who are residents and citizens of New York City, and the Pensacola City Co., a corporation, under and by virtue of the laws of Florida, who sue for themselves and numerous others against J. C. Patterson, personally and as administrator of the estate of E. J. Caro, dec'd, Octavia Thompson and Henry J. Thompson, her husband, James Wilkins, W. B. Runyan, Joseph C. Keyser, Ricarh H. Fries and John C. Lavalette, who are adults and Georgiana Isabelle Caro, John B. Caro, Theresa E. Caro, Josephine Caro and Mary L. Caro, who are minor children of A. V. Caro
59 and Nancy L. Caro, all of whom are of the city of Pensacola, County of Escambia, State of Florida, and Irene C. Wiliams, and Matilda C. Duval of the City and County of Mobile, State of Alabama, and others named in the bill and prayer.

The Complainants allege:

That they are owners in fee by far the greater portion of the tract of land in the City of Pensacola, Florida, known as the Cebeaux or Rivas tract, and together with the persons for whom they sue of the whole of said tract.

That the said tract of land originally belonged to one Gabriel De Rivas, but the title thereto was diversed out his heirs about the year 1817, by a legal and valid sale made under the authority of the Spanish Court in Pensacola, and by mesne conveyance from the purchaser at said sale became vested on Jan. 13th, 1837, in the Pensacola City Co., a joint stock association, by which it was conveyed in the year 1870, to the Pensacola City Co., a corporation then organized under the laws of Florida, and one of the complainants, and the interests of the other complainants have been acquired from the said corporation.

That in 1837, upon the purchase of the said property by the Pensacola City Co., it went into possession of the same and its grantors, mediate and immediate, the complainants have been in possession ever since except as hereinafter stated. That it then had it laid off into lots, blocks and streets, and a plot thereof known as the Geo. E. Chase plan, and of other of its property made and printed, a copy of which is hereto annexed, and marked Exhibit "A" prayed to be made a part thereof, and that portions of the said property were then and subsequently sold by the said plan.

That the said Pensacola City Co. and its grantors, mediate and immediate, have ever since paid taxes upon the said property, except during the war between the State of the American Union 1861 to 1865.

That in the year A. D. 1870, upon the purchase aforementioned by the complainant, the Pensacola City Co., it caused the said tract together with other of its property to be again laid off in lots, blocks and streets and a plot thereof to be made known as the Harding & Lee plan, a copy of which is hereto annexed marked "B" and prayed to be made a part thereof, and that by said plot it has made sale to said complainants of nearly all of the said tract, except what it has reserved for itself. That portions of said property owned by some of the complainants respectively according to said plan, is shown in the schedule hereto annexed as exhibit "C", and prayed to be made a part hereof, and are in part occupied by defts.

60 That from the time of the pruchase [purchase] by the Pensacola City Co., the Joint Stock Co., in 1837, the claim of it to the said property and tis [its] possession thereof remained unchallenged by anyone, and the said acts of laying off, plotting, selling and paying taxes were done without protest, objections or molestation until A. D. 1872, when E. J. Caro, Matilda Duval and Irene C. Williams, claiming to be the heirs of the aforesaid Gabrile Rivas, brought suit in ejectment against one of the tenants of the Pensacola City Co., complainant, one C. M. Hooper, for the possession of a portion of the said tract of land.

That in said suit the said pltfs. relied upon the title of the said Gabriel Rivas and their descent from him, claiming that the title had never been divested out of him and his heirs, and the said C. M. Hooper depended upon the title of his landlord, the complainant, the Pensacola City Company, derived as aforesaid—that before the said suit came to trial, the atty. for the said plff., Richard L. Campbell, Esq., became convinced by the discovery in the Spanish Archives of West Florida of the evidence of the divestiture aforesaid of the title out of the heirs of the said Gabriel Rivas, that the title was not in said plaintiffs, but in the Pensacola City Company, complainant herein, and declined to further prosecute the suit, but the said plaintiffs obtained other attys., and the suit, after the avoidance of a trial as long as possible by the plaintiffs, in the suit, by continuances, dismissals and voluntary nonsuits came on for trial in the United States Circuit Court for the Northern District of Florida at Pensacola in 1879, and was then and there decided by verdict of and judgment upon the merits of

the conflicting claims of title as aforesaid, in favor of the defendants, the said C. Hooper, tenant of the Pensacola City Co., complainant, and thereby in favor of the title of the complainant, and against the pretended title of the said plaintiff, claimed from the said Gabriel de Rivas, and that said judgment remains unreversed.

That up to the time of the bringing of said suit, no claim of title to the said property had ever been asserted by any of the heirs of the said Gabriel de Rivas or by the father of the said A. V. Caro, E. J. Caro, Matilda C. Duval and Irene C. Williams, one Joseph E. Caro, who was the son-in-law of the said de Rivas, and the keeper of the Spanish Archives of West Florida, and was well acquainted with the title of the property, in Pensacola as any other man in it, the fact being that the said Joseph E. Caro was a party to the sale of the said tract of land by the authority of the Spanish Court in
61 1817 and that no assertion or pretense of claim was made until years after his death, which occurred in A. D. 1858 or 1859.

That at or about the time of the bringing of the said suit, the said E. J. Caro, A. V. Caro, Matilda Duval and Irene C. Williams began to and have continued to take other steps to assert a title to the said property by making numerous sales of portions of the same by putting tenants under them into possession of parts of the same, by causing tenants of the complainants to attorn to them, by breaking open houses and breaking down enclosures which had been erected by complainants, and putting their agents and tools, therein to hold for them, and by substituting a new occupant thereof holding under them, whom the complainants would seek to dispossess, thus constantly changing the persons in possession in order to frustrate the complainants in their endeavor to obtain and retain possession.

That in order to settle the title to the said property to be without wuestion [question] in the complainants and to dispossess the said pretended complainants of a portion of the tract of which they had possession, the Pensacola City Co., in 1887, brought suit against the said A. V. Caro, E. J. Caro, Matilda Duval and Irene C. Williams in ejectment in the Circuit Court of Escambia county, Florida, which said suit, in 1887, resulted in a verdict and judgment for the said Pensacola City Co., and another adjudication of the validity of their title to the said tract, the said suit having been tried and determined on the merits of the said pretended title of the said defendants as against the title of the Pensacola City Co., derived as aforesaid.

That in spite of the said adjudication upon the said title, the said A. V. Caro, E. J. Caro, Matilda Duval and Irene Williams not only continued to disturb the possession of the complainants of the said tract by interference of their tenants and putting into possession tenants under them, and by sales and attemps [attempts] to sell the said property or portions of it, but also by themselves, their tenants and agents committed numerous trespasses upon the same and cut down and destroyed timber, wood and shade and ornamental trees thereon, and thereupon the said Pensacola City Co. filed a bill in the Circuit Court of Escambia county, Florida, in 18.., to enjoin the said A. V. Caro, E. J. Caro, Matilda Duval and Irene C. Williams from the further commission of the said acts of trespass and interference and to quiet the title to the said property—that in the said suit a temporary injunction was obtained, and after due pleadings and proofs the same
62 was made perpetual enjoining the same persons as prayed, and declaring the title to the said property to be in the said Pensacola City Co. and its assigns.

That upon appeal by the defts. in said suit to the Supreme Court of Florida, the said decree was affirmed as to the said A. V. Caro who was a resident of Florida, and in 1883 reversed as to the said other parties defendant, because no service had been made upon them, they being non-residents.

That complainants are informed, believe and charge that during all this time the said A. V. Caro and his family wholly, and the said other parties to said suits in part, were living upon the proceeds of sales of portions of said land, which they would through the said A. V. Caro induce persons to purchase, and from the rents from the tenants whom they would put into possession, and from sales of wood cut therefrom.

That in order to continue the said means of livelihood, the said Matilda C. Duval, Irene C. William and E. J. Caro brought a bill, in 1884, in the United States Circuit Court for the Northern District of Florida against the Pensacola City Co., and the said Nancy L. Caro, the wife of the said A. V. Caro (who by some pretended means had, after the said A. V. Caro had been enjoined as aforesaid, had become vested with his alleged interest in said property), the pretended purpose of the said bill being to have the said title adjudicated by the said Court, and to obtain an injunction against the said Pensacola City Co.

That in the said cause proofs were taken, and after numerous efforts by the defts. the Pensacola City Co. to have the same tried, and as numerous and strenous [strenuous] efforts by the complainants to postpone the final adjudication and

protract the litigation, the cause came on to be heard before the Judge of said Court, and the said injunction was refused, and the cause dismissed, and the Judge of the said Court delivered an opinion in favor of the title of the Pensacola City Co. to said property and against the title of the complainants, a copy of which opinion is hereto attached, marked "D", and prayed to be made a part thereof.

That in order to enable them to carry on the said litigation, the said A. V. Caro and his brothers and sisters aforesaid, have, from time to time, as complainants are informed, believe and charge, obtained money from divers persons to conduct the said litigation, promising to said persons large interests in the said land upon a successful termination of the litigation concerning the said land, they, the said A. V. Caro and his brother and sisters, well knowing that the litiga-
63 tion can have no successful termination for them, but are desirous of prolonging the same for the purpose of gain therefrom.

That the deft. J. C. Petterson is one of the persons who has been so induced to advance funds for the prosecution of the said litigation, and who obtained and claims a pretended interest in the said property, and since the death of the said E. J. Caro (who has departed this life) has become the administrator of this estate, although he was not of kin to nor a creditor of the said dec'd.

That they have also induced, as complainants are informed and believe and charge, the defts. James Wilkins, William B. Runyan, and Joseph C. Keyser to enter with them into the practices hereinbefore set forth of going into possession of parts thereof, of attempting to obtain possession of other parts of the said tract of land by putting tenants therein, and by inducing by promises thereto and intimidations other the tenants of complainants to attorn them, and have contracted with the said James Wilkins for the use of his money, and with the said William Runyan and Joseph C. Keyser for the use of their services in the connection aforesaid of their designs, and are nominally selling large portions of the tract to them for nominal sums of money.

That within the past six months the said persons have induced one Ephriam Pleasure, who went into possession of several acres of said tract as the tenant of the Pensacola City Co. to repudiate the said tenancy and to stand a suit at law for the possession of said premises, and that the said James Wilkins is paying the expenses of the said litigation, and that the defendants are continually and daily inducing others, tenants of the complainants, to refuse to recognize the title of the

complainants, thus rendering necessary numerous suits by complainants to dispossess them.

That despite the injunction aforementioned against the said A. V. Caro, he has continued in the interference with the title and possession of the complainants, and has twice been punished for a contempt of the said injunction, and yet, notwithstanding, he has given and is giving notice by publication, a copy of which is hereto annexed, marked "E", in a newspaper in the City of Pensacola, of his intention on the 7th day of March, A. D. 1887, to apply to the Judge of the Circuit Court of said County of Escambia for leave to sell the (pretended) interest of the said defts., John B. Caro, Theresa E. Caro, Georgiana I. Caro, Josephine Caro and Mary L. Caro, his minor children by his wife Nancy L. Caro (now
64 dec'd), in the said tract of land and he is, as complainants are informed, believe and aver, the person who negotiates with the said Runyan, Wilkins, Keyser and others for their money and services aforesaid, and who still acts as agent for the other defts., who pretend to be heirs of the said Gabriel de Rivas.

That there is being published in a newspaper of the City of Pensacola an advertisement, a copy of which is hereto annexed, marked "F", and prayed to be made a part hereof, in the names of Octavia C. Thompson, a daughter of A. V. Caro, and Nancy L. Caro, offering to lease and sell portions of the said land, which said advertisement complainants believe and charges is at the instigation of the said A. V. Caro.

That in spite of the aforesaid decisions adverse to the pretended claim of the defts., the acts hereinbefore charged against them have been continuous for years and still continue, so that, though the complainants possess an undoubted title to the said portions of said tract as herebefore set forth, it is impossible by ordinary suits of law in trespass or ejectment [ejectment] to protect their said rights of possession and that if it were possible it would require innumerable, vexatious and expensive suits by each of them against each of the defts., who [whose] fertility of resource in vexation, and in the evasion of the results of law suits, seems to be, under the leadership and guidance of the said A. V. Caro, inexhaustible.

That the action of the defts. aforesaid have rendered the property almost entirely unsalable by the complainants, and that if such actions are permitted to continue as they have continued for the past fifteen years, not only will all the shade and other valuable trees be cut therefrom, but the said property will be utterly valueless to complainants because on [of] the inability to sell the same.

That within a week the said Joseph C. Keyser has published and is publishing in a newspaper in the City of Pensacola, the advertisement a copy of which is hereto annexed, marked "H", and prayed to made a part of this bill.

That the deft. Richard H. Fries is an atty. at law in the City of Pensacola, and counsels, advises and aides [aids] the defts. in their aforesaid numerous attacks upon and violation of the rights of the complainants.

That the following defts., citizens and residents of the City of Pensacola, are holding possession of portions of the said property as tenants of the aforesaid defts., or some of them, and paying rents to them for their possession of the portions of the said tract, to-wit: Geo. Bell, Lewis Cobb, Lillie
65 Johnson, Amy Castleberry, Louisa Dean, Louis Ross, Geo. Gammel, Reuben Freeny, ...Steevens, and the following citizens and residents of the City of Pensacola, who have acquired possession by the trespass upon the possession of the complainants have acquired, and hold the same under the said pretended title of the said A. V. Caro, E. J. Caro, Matilda Duval and Irene C. Williams, to-wit: Edward Davis, Eugene Cardenas Ramon Campderos, As. Gant, John Rodgers, Joseph Rodgers, John Beck, C. L. Carle, Chas. Reparel, Ed. Rowe, F. H. Watts, Cable Schakleford, Beverly Citner, Pleas. Davis, John Ward, Cynthinia Henessey, Elizabeth Thompson, Jimmy Sunday, Thomas Bugg, John Harris, Henry Poisett and Joe Thompson, and that the extent and holding of the occupation of said persons is shown by the spaces enclosed in the red lines upon the accompanying attached diagram, which is, according to the said plan of Lee & Harding, marked "G" and prayed to be made a part hereof.

That the defts. herein are entirely without the means or property to respond in damages to the complainants for the injury which they have already done to them by their acts aforesaid, or for that which a continuation of the said acts will produce, or to be made responsible for the rents which they collect from the tenants.

That the complainants charge that the injury to them by the said acts of the defts. is irreparable in the destruction of shade trees on said land, in the costs incident to the numerous actions at law in trespass, ejectment and unlawful detainer, made necessary by them in the damage to the title of said property, and in the total inability of the defts. by reason of their want of means to answer the damages thus occasioned by them, by their acts in the possession.

That to the end, therefore, that the defts. and each of them may answer the premises to the best and utmost of their

knowledge, recollection, information and belief respectively, and that your Honor may declare the title to the said property to be in the complainants, as hereinbefore respectively claimed by them, that the defendants, and each of them, their agents, servants and attorneys, be perpetually enjoined from interfering in any way with the possession of the complainants or their tenants of their said property, and from asserting title to the same or any part thereof, from leasing or selling any part of the same, from receiving rent from anyone, or paying the same to anyone other than the complainants for the use of any part of the same, from taking or holding possession of the same or any part thereof by themselves, their agents, or tenants,
66 from cutting any shade trees, wood or timber upon the said land, from the collecting of the proceeds of any former sales or leases of the said land, from committing any trespasses of any kind whatever upon the said property, and from advertising or counseling or aiding the defts. or anyone else in the commission of any of the said acts—that a receiver may be appointed by your Honor to take possession of the lots and parcels of land and improvements thereon of the said tract which have been taken possession of by the said defendants and now held by them or their tenants as hereinbefore alleged, and to preserve and rent the same until further order of this Court, and that the defts. may be required to pay to the complainants all such damages as they may have sustained in the premises to be ascertained under the direction of this Hon. Court.

And that your Honor will grant unto complainants such other and further relief as in the premises may be meet and fit.

And complainants pray for process of subpoena according to law and the court of this Court to J. C. Petterson personally and as the administrator of the estate of E. J. Caro, dec'd, Octavia Thompson and Henry J. Thompson, her husband, James Wilkins, W. B. Runyan, Joseph C. Keyser, Richard Fries, John C. Lavalette, Irene C. Williams, Matilda Duval, Geo. Bell, Lewis Cobb, Lillie Johnston, Amy Castleberry, Louisa Dean, Louis Ross, Geo. Gammel, Reuben Freeny ..... Steevens, Edward Davis, Eugene Cardenas, Ramon Campderos, Andrew Grant, John Rodgers, Joseph Rodgers, John Beck, C. L. Carle, Chas. Raperel, Ed. Rowe, J. H. Watts, Cable Schakleford, Beverly Milner, Pleas. Davis, John Ward, Cynthia Hennessey, Elizabeth Thompson, Jimmy Sunday, Thomas Bugg, John Harris, Henry Poisett and John Thompson.

And complainants will ever pray, etc.

W. A. BLOUNT,
Sol. for Complainants.

Peter Knowles, being sworn says that the matters and things set forth in the foregoing bill as of knowledge are true, and those otherwise set forth he believes to be true.

PETER KNOWLES.

Sworn to and subscribed before me this 4th of March, 1887.

J. S. LEONARD, *N. P.*

I, B. B. Wilson, clerk of the Supreme Court of the State of Florida, do hereby certify that the foregoing pages, numbered from 1 to 15, inclusive, contain a true copy of the original bill of complaint in the case of James Wilkins,
67 *et al.*, appellants, *vs.* The Pensacola Citv Co., *et al.*, appellees, as contained in the transcript of record on file in my office in the case above stated, as certified under date of May 20th, 1889, by F. E. de la Rua, clerk of the Circuit Court of Escambia county, Florida, with the seal of the Circuit Court of said county attached, the decision in said case being reported in volume 36 Florida Reports, pages 36-61.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court, at Tallahassee, the capital, this 8th day of July, A. D. 1901.

B. B. WILSON,

Clerk of the Supreme Court of the State of Florida.

Cross Examination.

I understand that Judge Maxwell is the brother-in-law of Mr. Davidson, a party in the suit in which I was enjoined.

I have no knowledge of the relationship of Col. Younge and Judge McLellan, only from the records.

The suit Judge Maxwell decidede against me, was appealed to the Supreme Court, and affirmed by that Court, that suit and the suit Judge McLellan decided was appealed to the Supreme Court and decided against me, or that's the way I look at it.

An action has been taken to set aside that judgment in which McLellan decided, and that appeal is now pending in the Supreme Court of the State. I do know that Judge Maxwell recused himself on the grounds of relationship to the Youngs, in which these parties had interests.

I could not tell whether an application was made to set aside Judge Maxwell's decree and that he refused to do so.

Dr. G. O. BROSNAHAM, being duly sworn, testified as follows:

I was never connected with the Pensacola City Co. I was agent for the Pensacola Land Association. Was agent for it

up to 6 or 8 years ago. I don't know what year, it was about '85. I was agent up to that time. I don't know what relation the Pensacola Land Association bears to the Pensacola City Co. I could not tell which was organized first. I became agent for the old Pensacola Land Association in '71. I had not been a stockholder, or interested in any way prior to 1871.

I don't know whether the Pensacola Land Association claimed any of the Rivas tract prior to that time. I was not on this property as a tenant, and living on it. I had no connection with it.

68 I never heard of the Pensacola Land Association claiming the Rivas tract, not to my knowledge.

MANUEL GONZALEZ, being duly sworn, testified as follows:

I am 75 years old in November. I have been residing in Pensacola all my life, more or less. I know the property known as the Rivas tract. It had a few little squatty houses before my time. I don't recollect who built the first house, long before the war. I remember after the war when it was taken in possession of by A. V. Caro.

There were a few buildings on the beach, and one or two squatty houses on Bayou Texar, then an old darkey named Ephrain was there. Mostly colored people. The class that generally squatted there were negroes. I do not know of any of that property controlled by the Pensacola City Co. I knew John B. Caro, he was a son of Joseph Caro by Paula Rivas; she was a daughter of Gabriel Rivas.

I know Matilda Caro, daughter of John B. Caro, very well. I knew them all, the whole family. John B. Caro is dead. We called him Benito. I don't know Mrs. Florida McGuire. She was born in Mobile, I believe. There was no evidence of streets on this tract of land when A. V. Caro went there, nothing but the three hundred acres.

To my knowledge there were only a few negro houses and no evidence of streets, or public improvements, nothing but a regular wilderness.

I know of other parties gaining possession against Mr. Caro, and third parties of some of the property. I don't know who did it, but I have heard of it. I don't know who did it but I only know it was dispossessed.

Cross Examination.

There was a hotel on this side, I think, about 1844, sir, I think. I couldn't tell how long it remained there; I went to

New Orleans then, and stayed there a couple of years; I think it was burned down. I don't know who put it up.

I know where Friscati was; I can't recollect if there were any residences there, I think there were before the war, yes, sir. I don't recollect who they were. I was over in New Orleans and other places. I can't recollect whether the Rivas tract had any residences on it or not, can't say who they were. There were two or three there, I believe; I don't recollect that any were occupied by gentlemen in Pensacola. I don't
69 know whether gentlemen at Pensacola had residences there at Firscati. They may have had. A good many persons were on the land prior to the war. I don't know under what titles. I don't know under whose permission they were there. I simply know they were there.

EPHRAIN J. PLEASANTS, witness for plaintiffs, being duly sworn, testified as follows:

I am one of the tenants you have been talking about here, how I got on the Rivas tract in 1867. I arrived home here, and had no money to pay rent, and I took my son and wife and went out here on Bayou Texar, and an old gentleman there told me to go to Col. Blount and he could tell me something about the land. I took my things down in the woods there and commenced to put up my house. I put it up in six months, in the same year I cam [came] to see Col. Blount.

He said, my man, I ain't got no land but I am agent for it, and in 1869 there was a man came from New York here, by the name of George Brainard, and he sent for me by Mr. Caro, and he asked me whose paper did I have, and I told him Col. Blount's. He said, I am the proper agent now, you give me that paper, and I did so, and he wrote another paper, and told me I could stay there. Col. Blount didn't charge me nothing, neither did Mr. Brainard, he said I was an old man. In 1867 Mr. A. V. Caro told me that land belonged to Gabriel Rivas, and that he was the agent and to take his paper, and he would protect me, and I took it and after I took Mr. Caro's paper there came a dispute there, and I goes to his wife and she gave me a paper. I paid Mr. Caro and his wife. I didn't pay no other man, I am not there yet.

In the year 1894 William Fisher came to see me. He was not the first man there. Col. Young sent Mr. Parkhill out there with a paper from the Court, and read it to me, and told me to come out, and give up possession of it. I wouldn't take it. That was in '94.

Now let me tell you Col. Young gave me the first rally to move off there, he sent Parkhill to me, and Parkhill wanted

to read the paper, and he said he would stick it in the fence, and I told him I didn't care what he did with it, and he stuck it in the fence and drove off. After that Sheriff Joe Wilkins came out with a paper, and told me that I was a tenant of the City Government. I did not take a paper for any of them, he said the paper was for me, and I kept it.

70 Well, in 1894 William Fisher sent for me through Tom Pebley to appear before Judge Barnes. He says, my man, I ordered you in 1893 to move. Why didn't you move? I told him the reason I didn't move I wrote to Tallahassee to the Judge then, and I had to write to Washington to see if it was government land, and they said it was individual land, belonging to Gabriel Rivas, and I did not move. He looked at the paper and said I had to move, and I asked him how long he would give me to move, and he gave me one day to move and I got a white man to talk to Judge Barnes and he gave me from Friday until Monday. I stayed from 1874 till 1894 by permission of Mr. Caro.

Cross Examination.

I am old, but I got a good recollection. I do recollect it was 1894. I never paid to anybody but Mr. Caro, I never paid to Mr. Fisher. I did not pay rent to Mr. Fisher from 1887 up to the time that I moved off, he wanted it, but I would not pay it to him. I had to move by order of Judge Barnes. I didn't pay any rent to Mr. Caro 1871-70-72 and '73 that trouble came according to my recollection, and when I didn't have the money I gave him my crop, potatoes, watermelons, told him I was a poor man.

I heard about the new city Co. James Knowles came up there and wanted me to take his paper. I told him I had Mr. Caro's. He said you take mine, and I will give you insurance. He said we are the people who bought it from the New York Co.

I got my first permission from Col. Blount and then got permission from Mr. Brainard, who told me Mr. Blount was not the agent any more, but that he was. Afterwards, Mr. Caro came to me, and I took a paper from him. Mr. Caro did not tell me what Mr. Brainard wanted to see me about. He said Mr. Brainard said to come to his office. He had his office where old Mr. Brecker used to have his office.

C. LENNOX, witness for plaintiffs, being duly sworn, testified as follows:

I was living on the property, I first moved on the Rivas tract about 30 years ago. I went on by permission of Mr.

Young and Mr. Blount. They put me there. I am now there by Mr. Fisher. Yes, sir; under Mr. Fisher. I moved out of the old place, I was never a tenant of Mr. Caro on that
71 property. I never paid nobody rent but Mr. Fisher. Didn't pay Mr. Young. I have been paying Mr. Fisher about 8 or 10 years. He was the receiver prior to 8 or 10 years ago, I paid nobody. Paid nobody until I paid him, come and go as you please.

Cross Examination.

I know Adam Lennox, he's my son. Phil Lennox is my son too. They were upon this property also.

Phil. does. Adam stays with me, I couldn't tell exactly when Phil went there. I couldn't tell how long since. I reason it was Phil who went first, we all went on the property about the same time. I know William Simmons, he is on that tract of land right by my son Phil, I couldn't tell how long he has been there, not twenty years, I guess about 15 years.

ALPHONSE VILLENUVE, witness for plaintiffs, being duly sworn, testified as follows:

I am sixty-three years old. I know the Rivas tract of land. I lived on it 30 years next August. Mr. Caro give me the right to live on it, he was living on the tract, and he never asked me no rent, said I could stay there as long as I wanted to, until five years ago, I was thrown out by Mr. William Fisher, Mr. Caro let me live there. Mr. Fisher put me out five years ago. Mr. Pebley and Sheriff Smith was with Mr. Fisher. No papers had been served on me before they throwed me out.

Cross Examination.

I asked nobody's permission when I went there. I had no titles of my own. Mr. Caro never molested me. I didin't ask permission. I never took my lease from him. No, sir; he never said nothing.

W. E. LEGGET, witness for plaintiffs, being duly sworn, testified as follows:

I haven't lived in Pensacola for some time, when I was a youngster I lived there, I lived on the Rivas tract.

Mr. Caro put me and my mother there in a home, to see that nobody didn't trespass on the land. I was there somewhere about a year or two ago. It was about 30 years ago, or more. I never lived there except during that year. I know of the land since then, I know that Mr. Caro has lived there

72 since then. I never paid any attention only to see that nobody destroyed anything on the land.

It was a howling wilderness, only a colored family or two lived there just beyond where I lived.

Cross Examination.

I lived in a little new house, hadn't long been put up when I went there. I left it vacant when I left. I don't really know who put it up, but think some colored people. I didn't pay any rent to Mr. Caro, I was looking after the property for him, only working in that way.

ALEXANDER ROBINSON, witness for plaintiffs, being duly sworn, testified as follows:

I lived on the Rivas tract of land, went there through the permission of Mr. Caro. I don't exactly recollect the year, it was somewhere about '70. I lived there near 27 years. When I went there there were no streets laid off, several buildings, no streets the biggest part of it was woods, a regular forest. The class of people living there, when I went there, were mostly colored people, two or three families, maybe four.

Cross Examination.

I went there because I wanted to live out that way, I had an agreement with Mr. Caro as to my staying out there. He agreed to let me stay there provided I paid him the rent. I don't recollect paying him anything, I stayed there until I got ready to move.

MR. FISHER, witness for plaintiffs, being duly sworn, testified as follows:

I haven't the possession of the records of the Pensacola City Co., as receiver. I don't know who has possession of them, I never saw them. I have seen the papers, the stack book, and the minute book. I never have been receiver of the Pensacola City Co.

I was receiver of the tract of land, known as the Chebaux tract. I don't know if they were defendants in the suit, in which I was appointed receiver. They were simply grantees of the Pensacola City Co.

I knew Judge Maxwell. I never heard that he was interested in that tract of land. He was not related to Mr.
73 Young, to my knowledge. Not to my knowledge, was he related to Mr. Young, by marriage.

I knew Judge McLellan in his lifetime, I was executor of his estate. I don't know if he was involved in or related to

anyone interested in this land. I was told his wife was the sister of Col. Young.

He did leave children. I have been told by Mr. Philip Young, who is the son of Col. Young, that his first wife was a relative of Col. Young. I think he is here, he was here yesterday.

Mr. Blount: We admit that Mr. Young's first wife was a sister to Judge McLellan.

FRANK GIRARD, witness for plaintiffs, being duly sworn, testified as follows:

I am acquainted with the Rivas tract of land. I have lived on this land, I rented from Mr. Fisher. I went there about two years ago. Twenty-five or thirty years ago, Mr. Caro was acting as agent or guardian of the land.

Cross Examination.

I meant by his acting as guardian of the land, that he was renting the houses and selling some of the land. He had sold some land to Dr. Clark, the house burned down. Then, Mr. Fisher got hold of it, Dr. Clark left then. I suppose Mr. Fisher sold the land to John Williams. John Williams has been living on the land I don't know how long.

CHARLES AHRONS, witness for plaintiffs, being duly sworn, testified as follows:

I know the Rivas tract of land. I never lived on it. I owned five lots there, according to the old Chase survey. I did not buy it. My uncle bought it, I believe he bought it from a man named Smythe West. It has been forty or fifty years ago. There was no streets 30 or 35 years ago, nothing but bushes. It was called in former days, the old Chase Survey.

Cross Examination.

The lots I own, by the old Chase survey, are in block 318, lots 1, 2, 3, 4 and 5, that was the old Chase survey.

Blount shows map to witness and witness identifies block as 318.

74 Re-Direct Examination.

I was agent for the Rivas heirs, at that time, about twenty years ago or more, fully twenty years ago. I was agent two or three years, I just looked out after their interests. They gave me the power of attorney to look out for their interests.

I didn't molest any of the tenants on the place, was just their agent, I told Caro it was under me.

WALTER J. BICKER, witness for plaintiffs, being duly sworn, testified as follows:

Direct: I suppose I have been on the Rivas tract of land. I have been around that tract, from Pensacola to Bayou Texar to Carpenters creek and the whole country. I have been familiar with the tract of land ever since I was a boy. I am 63 years old. I don't know anything about how long the Rivas heirs have been claiming that tract of land. Up to 1870, it was a wilderness, I have picked many a chickinpin through that country.

There was no evidence of streets in that land, in 1870. There were three houses at Friscati; one man Shemo, built the two-story house just east of Friscati. The fence didn't run down to the bayou edge as it does now. There was a road that run between old man Shemo's place and Friscati.

Friscati was a public place, people used to go there and give picnics. There was another house southwest of Friscati that Mr. McCaskill lived in, he built that house. Shemo lived in the house just east of that. They burned down. Old man Shemo, he was a white man, but got killed some time before the war; old man Jordan killed him before the war.

Cross Examination.

These houses I spoke of were there before the war, they were there when I fought in the war. One of them belonged to Mr. Shemo.

I don't know who owned the others, but during the war, they had a hospital on that tract.

Mr. O. M. Avery had a two-story house he built himself way up on the hill. It was flat roofed. Then there was another, called the butcher pen, for slaughtering, but it was an old rickety house.

75 WHITEFIELD IGHROM, witness for plaintiffs' being duly sworn, testified as follows:

Direct: I know the Rivas tract of land. I lived on it. I went there through Mr. Caro. I can't tell how long I stayed on it. I had three houses there. One I bought from Dr. T..... and one from an old man there, and me and Mr. Thompson built one. It was by Friscati, by the bay, up on the hill. I don't know how many years, I didn't keep account of the years. I can't say exactly how long. I had the house that Henry Thompson lived in, I kept possession of that till about '82 or '83, somewhere along there. Until Mr. Fisher got in possession of that land some way, I put a man in charge of

the house, and told him to stay there and look out for the place, and his wife lived there too. I am not living there now, I live in town now.

I went on that tract of land about '70 or '71, after the war. I stayed there until Mr. Fisher was appointed receiver, when I wasn't living there myself, I had tenants in my house. Tom Sunday reported to me when Mr. Fisher took possession. I put them in my house, and they accounted to me, and I accounted to Mr. Caro.

Cross Examination.

I had three houses there, I bought two and built one. I was employed to cut out streets there, between '70 and '73, by Mr. William Cook and Mr. Clarence Knowles. I cut one or two streets, and I struck a street that went to Mr. Caro's house where he was living and I cut the street within 20 steps of Mr. Caro's house, and Mr. Caro came out and said Whitfield Ingraham, don't you put your foot in my land, if you do, I will shoot you down.

I said, hold on, let me see about this, and I came down town. I lived on that land 17 years, and reported to Caro all that time.

Re-Direct: I bought two houses and built one. I think in '70 or '71 or '72, I never kept account what year or date.

I couldn't tell what year I bought them, I bought one from Doc. Dillard, I bought the other from Lobeman they were new houses.

I was there when one was put up, they put up the other one two or three years afterwards. I bought them two or three years after they were put up, I don't know exactly what year they were put up. They wanted to see [sell] them and came to town.

Before I bought them, I spoke to Mr. Caro about
76 it, he told me that I must speak to him about things like that. I bought one like this month, and next month the other.

I got a bill of sale for them, when I got them, it just said they sold me the bill of sale for the houses. I got the second house a month after the first. I never took particular notice of the day of the month. I got the papers at home. I never took no notice and that disturbance came.

Mr. Harper comes down there and told me I got to move my houses out of the way. I let them alone, I had people living in them. He knocked down my fence, and I thought it would be best to stop putting people in them houses. They paid me some, I didn't keep no date. They paid me a little, that's all.

The lots wasn't laid off to me, I had some ground, I paid Mr. Caro pretty often. I don't know exactly, didn't have any agreement with him. No agreement as to any certain sum. I just handed him the money when I got it.

I stayed out there a good deal. I stayed out there from '73 to '80.

I has my property here by Bull Springs, on Garden street. My wife stayed out there, I stayed there too, pretty regular. We was beginning to raise gardens there.

VICE BECK, being duly sworn, testified as follows:

Direct: I know the tract of land they call the Rivas tract, those three hundred acres up here. I have lived on it over 30 years. Mr. Caro told me I could go there, and put me up a little house and stay there as long as I wanted to.

I put me up a little house and I stayed there under Caro's possession, until Mr. Fisher made me pay him, never was I molested, until Mr. Fisher came. It was years ago when he first made me pay rent. I could not tell you unless I first looked at my paper.

Cross Examination.

I couldn't tell if I commenced to pay rent to Mr. Fisher in 1887, but every year I pay him rent. Do not know, never looked.

I don't know what blocks I am on, never paid any rent to Mr. Caro, he never did ask me for any.

Re-Direct Examination.

When I went there, there were no signs or streets that I could tell, it was all woods, there was only a few shanties around.

77 J. C. KEYSER, witness for plaintiffs, being duly sworn, testified as follows:

Direct: I am interested in the Rivas tract of land. I have known Judge Maxwell. He was trustee of the Pensacola City Co. and attorney.

He was the Judge that acted in that suit against the Caros. I say he [was] trustee of the Pensacola City Co. and attorney.

He bought and sold on that tract and gave warranty deeds, and still acted as Judge in that suit. I refer to the injunction suit in the 19th Florida Reporter. Judge Maxwell had children, he recused himself on a subsequent occasion, on account of relationship.

I knew Judge McLellan, I knew he was related to parties interested in the tract of land, he married Col. Young's sister. Col. Young was an attorney. It is my understanding that he was interested in that property. I think he was one of the complainants in the suit before Judge McLellan. Judge McLellan acted in the suit. Judge McLellan had children by the sister of Col. Young. That was the suit in which Mr. Fisher was appointed receiver.

Plaintiffs offer copy of answer of the Pensacola City Co., signed C. C. Young as one of the directors of the company, for the purpose of showing that Mr. Young was a party interested in the Pensacola City Co., and was plaintiff in that suit, and also for the purpose of showing that Judge Maxwell had acquitted property in that suit; which document is set out in words and figures as follows:

"Exhibit C," Offered by Plaintiffs.

To the Honorable Judge of the Circuit Court of the United States, Fifth Judicial Circuit, Northern District of Florida:

The Answer of the Pensacola City Co., defendant, to the Bill of Complaint of N. J. Caro, Matilda Duval, widow of the late Philip Duval, Irene C. Williams, widow of the late Boykin D. Williams.

Said defendant reserving all objections and right of exception and demurrer to the manifold errors and insufficiencies of the said bill of complaint, for answer thereto, or so much thereof as the said defendant is advised it is necessary to answer, answering, says:

1. That it is not true, as alleged in the said bill that
78 the said complainants are the owners of the said tract of land, containing three hundred arpends and 100 perches, as described therein.

2. That the defendant does not deny that the said complainants may be the legitimate heirs of the said Joseph E. Caro, and Paula Rivas, but the defendant does deny that they inherited the said tract of land, as by them claimed, through Paula Rivas, the daughter of Gabriel de Rivas.

3. The defendant also denies that Nancy L. Caro, wife of A. V. Caro, is an owner of the undivided half of the said described tract of land, and also denies that he acquired the same through purchase from Edward J. Caro, said defendant denying that said Albert J. Caro owned any estate therein.

4. Said defendant, further answering, says that it is admitted that the said Gabriel de Rivas acquired title to the

said tract of land by a grant from the King of Spain, as claimed in the said bill, and that he held possession of the same until he departed this life, in the year 1808, or thereabouts, and denies that he held possession until 1818, and also denies that the said Paula Rivas and Marusha Rivas, wife of Marcus Riera, upon the death of the said Gabriel Rivas, became seized of the said land or remained seized and in possession and occupancy of the same to the time of their respective deaths, as alleged in said bill.

5. The defendant also denies that said complainants and A. V. Caro, after the death of Paula Rivas, and Marusha Rivas became seized and possessed of the said land, or remained in possession and occupancy of the same to the present time, and also denies the possession and seizin of the said Candita R. Caro and Edward J. Caro and Nancy L. Caro and A. V. Caro, as in the said bill claimed.

6. It is admitted that the grant of the said tract of land was confirmed to the said Gabriel de Rivas, but that the complainants have acquired title to the said land by possession and occupancy is expressly denied, that they have had possession of the said land for sixty years is denied, it is also denied that they have had any possession of any part of the land for any period of time hovewer short, except perhaps a cautious possession of certain tenements thereon, which was acquired within a few years past by the trespass of A. V. Caro.

7. Defendants admit that the said Pensacola City Co. was incorporated in the year 1870, as stated, but denies that the said company have conspired to deprive the said complainants or others of the possession or occupancy of said land, and deny that they have brought a multiplicity of suits in different Courts for an improper purpose in regard to
79 the said land. On the contrary, the said company has been compelled to defend the most vexatious and groudless suits brought by the complainants for the recovery of said land, and from time to time, for the last ten or twelve or more years, in the State Circuit Court of Escambia County, Florida, and in this Court, that the first suit brought by the complainants was in the State Circuit, about the year 1872, in which C. M. Hooper, a tenant of said company, was defendant, which was the first assertion of title ever made by the complainants to the said land (they never having paid taxes thereon to this time) or by any descendant of the said Gabriel de Rivas, as the defendant is informed and believes, since the sale of the said land by the said Paula Rivas, the widow, the widow and executrix of the said Gabriel de Rivas, which was

made under the authority of the Spanish tribunal, on the day of ..... A. D. 1817, for the benefit of the heirs of the said Gabriel de Rivas, all of which fully appears by a certified copy of the proceedings filed herewith as a part of this answer. That the suit was brought upon the supposition that there was no recorded evidence of a sale of the said land by the said Gabriel de Rivas, or his representative, but soon after the said suit was instituted, on a thorough search of the Spanish archives, the office at Pensacola, the above referred to proceedings were found, whereupon the attorney who advised and instituted the action being satisfied that the estate of Rivas had no title in the land, promptly withdrew from the case. The complainants, however, with A. V. Caro, who is now occupying a back seat, secured other coumsel and from that day to this have pressed their groundless claim of title on the attention of the State and United States Courts that held their terms at this place, and without success in a single instance, that it has been the policy of those parties to keep the case in Court as long as possible by continuous and various pretexts, and when continuances could no longer be had, to take nonsuits, and bring new actions. That the said suit of C. M. Hooper, after several continuances in the State Court, was nonsuited by the complainants, and renewed in this Court, in the year 187.., which case was brought to trial in the year 1877, and after a full and patient hearing by the Court, and after the whole of the testimony had been heard on both sides, again the complainants (plaintiffs in that action) took a non-suit. That soon after the adjournment of the Court, the said complainants again re-instituted their action, against the same party for the same property, which last action was brought to trial in the year 1879, when, after
80 another long and weary trial, the case being submitted to the jury, they found their verdict for the defendant and against these complainants.

This being the third action between the same parties for the same premises, and the title of the respective parties having been fully investigated, and relied on in each trial.

So far from the defendant bringing a multiplicity of suits, up to this time about 1879, with great forbearance they had brought none, notwithstanding the fact that A. V. Caro, one of the defendants [descendants] of Gabriel Rivas, and agent for the other heirs, had committed a number of trespass on the land by inducing colored people for small sums of money to take leases of lots on the tract from him.

As additional ground for a bill of peace, as well as to recover the lots, in the year 187.., the defendants instituted an

action of ejectment against A. V. Caro and two tenants of his, for recovery of a portion of square 194, according to the map and plan of the new City of Pensacola, made by Harding and Lee, being a part of the said tract of three hundred arpents, and which is generally known as the Chebeaux or Rivas tract. That this suit was continued by various devices and excuses of the said A. V. Caro, who has been the most active of the claimants of the Rivas title, from term to term, against the earnest protest of the defendant.

That this suit was brought on to trial, at .... term of the Circuit Court of Escambia County, A. D. 1882, and resulted in a verdict for the defendants (the first in the case), in the meantime, however, the said complainants having made themselves so troublesome, by the numerous suits and numerous trespasses on the said land by leases to various parties, this defendant (and also in behalf of a number of parties claiming under them) filed a bill of peace in the Circuit Court of Escambia County, Florida, against the said A. V. Caro, the most troublesome of the said defendants of Rivas, reciting the history of the title of the company to the said land, and the large amount of troublesome litigation to which this defendant had been subjected by the said A. V. Caro, under the said pretended claim, as heir of said Gabriel de Rivas, after considerable delay, this case was brought to final hearing in the State Chancery Court, and resulted in a decree perpetually enjoining the said A. V. Caro from further interference with the said land, a copy of which decree is hereto attached, as a part of the answer.

This case was carried by the said A. V. Caro to the said Supreme Court of the State and was by that Court affirmed, except that Court held that the other heirs of Gabriel
81 Rivas could not be affected by its decree, they not being parties to the proceedings, which had not been claimed by the complainant in that case. According to the best recollection of the defendant, the two suits were all that have been brought by the defendant against the said complainants, relating to the said land, and the defendant hopes not to be compelled to bring any more.

8. And further answering, the defendant says that it is not true as alleged that, in the year 1870 or at any other time, said defendant forcibly invaded the said tract of land with the intention of taking either lawful or unlawful possession of the same.

That the said tract of land had been in the quiet and undisturbed possession of the Pensacola City Company, as a joint stock association, from the year 1837, when it was by

them acquired by purchase for a large sum of money, to-wit: more than $4000.00, from sundry parties claiming by regular deraignment of title back to the Spanish Crown, and, through the said grantee, Gabriel de Rivas. That, in the year 1837, the said joint stock association laid off the whole of the said tract of land into blocks, lots, streets and public squares, and had a large edition of maps of the same published, known as the George E. Chase map, and soon thereafter, at a public sale by auction, disposed of several hundred of the said lots to parties living in Florida, and various other States of the Union, at prices varying from $100.00 to $1,000.00, some of the said purchasers entering into possession of the said lots and making valuable improvements thereon.

That this possession of the Pensacola City Company, the said joint stock association, and the said purchasers claiming under them, was open, notorious and necessarily well known to all the inhabitants of Pensacola, among whom were the father and mother of the said complainants, to-wit: Joseph E. Caro and his wife, Paula; the said Joseph E. Caro being then and remaining up to the time of his death, the keeper of the Spanish archives, in the City of Pensacola, departing his life on the day of about the year 1857, and his wife departing this life on the .... day of about 1848, who during all this time made no assertion of title to said property.

That the possession was continued by the said joint stock association until the year 1870, when the said association was incorporated by the legislature of Florida, as before stated, and a formal conveyance of the said property was made by the trustees of the said Pensacola City Company, as a joint stock association, to the said incorporated company, and the possession so acquired has remained in the said in-
82 corporated company to the present time, except so far as the said company has sold and conveyed sundry of said lots to other parties.

That, in the year 1870, or thereabouts, the said defendants, with the consent and approval of the municipal government of Pensacola, abolished the original map, made as hereinbefore stated, in 1837, and known as the Geo. E. Chase map, which included, among other tracts of land, the said Rivas or Chebeaux, and substituted therefor a new map and plan of the same, made by Harding and Lee, and known as the Harding and Lee, copies of both of which maps are hereto appended as a part of this answer.

That under the Harding and Lee map, a large number of these lots had also by public auction been sold to sundry parties, residing in Florida ,and other states, notably Kentucky,

Pennsylvania and New York, to-wit: more than 500 hundred lots, which are still held by them.

9. That defendant denies having ever abandoned possession of the said tract of land, or any part of it, and denies all possession of the said tract of land on the part of the complainants, except isolated spots on which they had trespassed, and this defendant has no knowledge of the allegations relating to the "Saw Dust Road," as in said bill stated.

That the defendant is also ignorant of the alleged trespass by said Davison, having given no authority to him in the premises, though defendant has heard that said Davison, who was the city surveyor, had been employed by the owners of some lots in the said tract to survey them, and had done so, but while engaged in making said survey, to-wit: in June, A. D. 1883, his work was interrupted and interfered with by the said A. V. Caro, and for which interruption and interference the said A. V. Caro was fined and imprisoned for a contempt of Court in disregarding the injunction of the said Court, by which he had been enjoined from said interruption and interference.

10. And, for further answer, the defendant says the parties to the said proceedings are defective, and the complainants do not by their said bill and the allegations therein contained, show that they are entitled to any injunction or relief in a Court of equity, nor do they show that this Court, as a Court of Equity, has or can have any jurisdiction to make any decree in their behalf, and the defendant prays that the same benefit of this demurrer set up in defendant's answer as though said bill had been formerly demurred to.

11. And said defendant, having fully answered, prays to be hence dismissed with his reasonable costs.

(Signed) THE PENSACOLA CITY CO.,
By C. C. YONGE, Sr., *Solicitor.*

83 Northern District of Florida.

C. C. Yonge, Sr., as one of the directors of the Pensacola City Co., comes and says that, being duly sworn, the allegations in the foregoing answer, so far as they are of his own knowledge, are true, and so far as stated on information and belief, he believes them to be true.

(Signed) C. C. YONGE, Sr.

Sworn to and subscribed, this 5th day of March, A. D. 1884.

(Signed) W. W. WHARTON, *Clerk,*
[SEAL] By JAS. L. ROCHE, *Dep. Clerk.*

U. S. Court, Northern District of Florida, at Pensacola, March Term, 1884.

THE PENSACOLA CITY CO.
vs.
E. J. CARO, *et al.*

To the Honorable Court:

And said Pensacola City Company, for answer to rule made at New Orleans, in the State of Louisiana, on the .... day of .... A. D. 1888, hereby files answer to the said bill of complaint and injunction, and prays that the said rule be discharged.

And in duty bound, will ever so pray, etc.

(Signed) C. C. YONGE, Sr.,
Solicitor for Defendant.

March 3rd, 1884.

Sworn to and subscribed before me, this third day of March, 1884.

(Signed) W. W. WHARTON,
[SEAL] *Clerk.*

Witness, Mr. A. E. Maxwell, was a brother-in-law of Mrs. Davidson, and married Mr. Anderson's sister.

Cross Examination.

I said Judge E. C. Maxwell had recused himself on account of relationship. If I said he had recused himself on account of interest, I wish to correct myself. He recused himself on account of being a relative to the parties to the suit. I am a little hard of hearing, and sometimes don't catch the questions, I think.

I know that Judge McLellan married Col. Young's
84 sister, in this way, we have the marriage certificate, it is in our possession. My knowledge that there were children by the marriage came from relatives of Col. Young. I am speaking from what the people have told me. I am interested in the tract of land. It is hard for me to say just what interest I have. I have an interest in 200 lots of this property, if this suit succeeds. The whole thing depends on the success of this suit. I am not to do anything to acquire the interest. I am a witness, however, I don't know of anybody interested in the same way that I am. I have never seen any agreement with Mr. Pryor to the effect that he is interested in the same way that I am. I think there was an agree-

ment. I only know there was from general hearsay. I don't remember that Mr. Pryor ever told me in conversation, he may have mentioned it, but I don't remember that he did. From Alberto Caro, I think there was.

FRANK TUART, witness for plaintiffs, being duly sworn, testified as follows:

Direct: I am sixty-six years old. I know what they call the Rivas tract of land. I have known it for thirty years.

Its condition thirty years ago was nothing but small roads and paths running through it, they were country roads, one went by my house. I lived close by the property.

There was only one house there 30 years ago. It was Caro's house. The house he lived in. I know Caro has been claiming this property about 30 years. I don't know when Mr. Hooper went there.

Cross Examination.

I do not know of anybody else claiming this property besides Caro.

I know of law suits about it, there were a good many law suits about it.

I don't know much about the affair, except that it interested Caro and his wife.

J. W. FRATER, witness for plaintiffs, being duly sworn, testified as follows:

Direct: I reside in Pensacola, have resided here twenty-three years. I don't know that I am very familiar with the Rivas tract of land. I know the place that is designated as such. I bought five lots of that tract of land from A. V. Caro. I do not own the property now. I could tell
85 who owned it. I sold it to William Fisher. I don't recollect the date I sold it. I bought it in '92 and sold it in '96, I think.

Question: Did you sell under the Caro title?

Defendants object to what title sold under.

Court: Your deeds, if you have any, will show what title they were sold under.

Witness: I did not purchase directly any of that property from anyone except Mr. Caro. I purchased the property, as I said before, from Caro. I think it was in August, '92, I employed the City Attorney to make the deed. W. A. Blount was City Attorney. Mr. Blount prepared the deeds. I accepted what he did, I don't know whether he passed on it or not.

He is not my attorney. He was my attorney for that particular piece of business. I don't think he made any statement at the time, that Caro did not own any of the property. I think he did supplement the deed with a deed from the city, all of which is recorded. I was not molested while I held possession of that property, between 1892 and '96.

Cross Examination.

I am not prepared to say who was in possession of that property at the time I bought it. I don't know that you was. I have stated all that I recollect on that subject a little while ago.

I have the deed from Mr. Caro to myself.

The amount described, and according to my recollection, is a description of the property, I subsequently sold the property to you, lots 1, 2, 3, 4 and 5, block 318, according to the Chase plan, situate, lying and being in the City of Pensacola, and State of Florida.

Re-Direct Examination.

I am county treasurer here, I have been for about 12 years. Plaintiffs rest.

The defendants, by their counsel, to prove the issues in their behalf, produce one WILLIAM FISHER, as a witness, who, being duly sworn, testified as follows:

The property sold to Mr. Frater was the property known as the Aahrons property, I mean the property described by Mr. Aahrons this morning, Mr. Caro filed a petition after
86 the decree had been filed against, and the injunction was filed against him by the Pensacola City Co. Then a decree of the Court requesting me to deliver that up, here is a certified copy of the petition.

Defendants offer in evidence certified copy of the petition, which document is set out, in words and figures as follows:

Exhibit 4.

In Circuit Court Escambia County, State of Florida, in Chancery.

WM. H. DAVISON, *et al.*,
vs.
J. C. PETTERSON, *et al.*

To Hon. W. D. Barnes, Judge of said Court:

Your petitioner, A. V. Caro, respectfully shows unto your Honor that he is the bona fide purchaser for a valuable consid-

eration, of lots one (1), two (2), three (3), four (4), five (5), in block (318), of what is known as the New City within City of Pensacola, Florida, according to plan of Geo. E. Chase, made in 1835 and 1836.

That your petitioner purchased lots from one Charles Ahrens and wife, on the 20th day of Nov., A. D. 1891, and that said Ahrens obtained title to same as divisee named in will of one Henry Ahrens, of record in Escambia County Court, and that said Henry Ahrens obtained title to said lots by a deed from the Pensacola City Co., a joint stock association, dated April the 3rd, 1842, and that the complainants in suit herein are the successors in title to the said Pensacola City Co., and their bill of complaint does not cover or include lands in the tract known as the Rivas tract sold, or deeded by the Pensacola City Co., prior to the complainants acquiring title, and your petitioner alleges that complainants herein did not acquire title to said Rivas tract until long after the said Pensacola City Co. had sold and deeded lots described herein to said Henry Ahrens, in 1842, from which source your petitioner deraigns title.

Your petitioner further shows unto your Honor that said Charles Ahrens and Henry Ahrens have been in possession and control of said lots for nearly fifty years last past, until about the date of Nov. 1st, 1891, when possession of same was asserted by William Fisher, Esq., receiver, by order of this Court, to take charge of the property in controversy,
87 in suit of W. H. Davison, *et al.*, J. C. Petterson, *et al.*, and the said William Fisher, as receiv[illegible] aforesaid, claims to be in possession and control of said l[illegible] and denies the right of your petitioner to [take] possession of same.

Your petitioner shows further unto your Honor that although he was permanently enjoined by an injunction from this Court, on or about 1883, from selling or buying lands claimed by the Pensacola City Co., *et al.*, what is known as the Rivas or Chebeaux tract, in which these lots are situated, that the said lots were not claimed by complainants, as same were not, at time of filing of said suit, the property of complainant, the Pensacola City Co.

Your petitioner further shows unto your Honor that, although his grantor, Charles Ahrens, was made a party defendant by an amended bill filed in suit of W. H. Davison, *et al.*, *vs.* J. S. Petterson, *et al.*, on the 19th Dec., 1887, and that a decree pro confesso and final decree was entered in said suit against said Ahrens, that said proceeding in no wise affected Ahrens' title to said lots described herein, for reason that the complainants in said suit did not allege or claim title to said lots, and in fact did not own same at said time of filing their

said suit, and the only claim alleged in the said amended bill of complaint of Davison, *et al.*, as set forth against said Ahrens, is a claim of said Ahrens to title in said Rivas tract by a deed from Nancy L. Caro, wife of your petitioner, dated Nov. 14th, 1885, and nowise refers to lots herein described.

Wherefore, your petitioner alleges and avers that in none of the suits described above has the title or the right of said Ahrens to convey said lots or your petitioner's right to buy and take possession been prejudiced or in anywise restrained by suits or order therein above referred to, and your petitioner denies the right of the receiver, William Fisher, Esq., to possession of said lots, and respectfully asks your Honor to direct said receiver to desist from asserting right to possession of said lots 1 to 5, inclusive, in block 318, and that he be ordered to surrender possession of same to your petitioner and your petitioner will ever pray, etc.

A. V. CARO.

Sworn and subscribed to before me, this 27th day of Jan., A. D. 1872.

[NOTARIAL SEAL] JOHN EAGAN,
Notary Public.

Charles Ahrens, being duly sworn, deposses and says that he has heard the foregoing petition read, and that, so far as the statements therein refer to him or his connection and ownership of said lots, that same is true, to best of his information and belief.

CHARLES AHRENS.

88 Sworn to and subscribed before me, this 27th day of January, A. D. 1892.

[NOTARIAL SEAL] JOHN EAGAN,
Notary Public.

STATE OF FLORIDA,
Escambia County.

I, A. M. McMillan, Clerk of the Circuit Court in and for the said State and County, do hereby certify that the foregoing is a true and correct copy of the original, as remains of file in my office.

In testimony whereof, I have hereunto set my hand and official seal, this 20th day of March, A. D. 1902.

A. M. McMILLAN,
Clerk of the Circuit Court.
By B. H. BURTON, *D. C.*

And I have the ded [deed] right here, and it is set forth in this paper, the Pensacola City Co. deeded to one Henry Ah-

rons on April 3rd, 1892, Henry Ahrens died and by his will it went to Charles Ahrons.

Cross Examination.

That petition was acted upon by W. D. Barnes, Judge of the Circuit, and the order is filed on record in the Circuit Court. Judge Barnes granted the petition and the parties came to me and also to Mr. Blount. Mr. Egan was attorney for Caro at the time, and through Mr. Egan, they got Mr. Blount to consent to it.

I have not bought any other portion of that property where the titles had gone through Mr. Caro except the property that was decreed to him in the suit of J. C. Petterson, *et al.*, *vs.* Davidson, *et al.* It was decreed to J. C. Petterson. I bought it from C. W. and F. B. Hagerman and Saunders. I bought the whole that was decreed to J. C. Petterson in that suit. The Court alloted him a small portion fronting on the water.

I cannot recollect how much it was. I could not sa [say] if Mr. Petterson went on the property before Mr. Caro.

I did not buy any property from Mr. Cryger; Mr. Cryger gave me a deed to some property he got from these parties on the hill; I was wanting it at the time. He gave me the deed and I investigated it, and delivered possession to the rightful owners, C. C. Younge the owner, showed me where he was the rightful owner, and I delivered it to him and made no claim.

89 I have been receiver since April, 1887. I don't know when I went into possession; it was in April, 1887; the order was dated the 4th of April.

A good many tenants of the Pensacola City Co., Younge and Tate; there was possibly one or two tenants claiming under Caro. Caro had made it a practice of trying to seduce the tenants of Tate and others. Caro would not charge them any rent; he would go to them and give them papers or leases and not charge them anything.

I was agent for Col. Younge at the time, and went over it for him, and went to every tenant, and found out when they went in possession and who they claimed under, before I was appointed receiver. The majority of the tenants claimed under Col. Younge and the Pensacola City Co.

The Pensacola City Co. were one of the owners, and as one of the owners got me appointed receiver.

I have never seen any of the books or papers of the Pensacola City Co.

I don't think they owned any of it at the time, when I was appointed receiver.

The Pensacola City Co. was a thing of the past.

As receiver I would not have their books and papers referring to this land. I never had anything to do with that; they were handled by the claimants' attorney; I had nothing to do with them.

The Pensacola City Co. did not exist when I was appointed receiver.

I don't know whether they were party complainants or not.

Defendants offer a decree in which Charles Ahrens was defendant before Judge McLellan.

Which document is set out in words and figures as follows:

90 *Exhibit* "5."

Offered by Defendants.

In the Escambia County Circuit Court, State of Florida.

W. A. BOOTH, the Pensacola City Co., W. H. Davidson, Walter Tate, Personally and as Administrator of Sallie S. Tate, Dec'd, Peter Knowles, C. C. Yonge, Sr., Louis Boley, Pensacola and Atlantic R. R. Co., a Corporation of Florida, A. V. Clubbs, W. D. Chipley, E. A. Perry, C. B. Parkill, Thos. C. Watson, W. E. Anderson, Alex. Stoddart, N. Thurston, Fannie E. H. Haines, Electra B. Richards, Josephine C. W. Terry, Van Baugh. Livingston, Abida R. Booth, Suing for Themselves and Numerous Others,

vs.

J. C. PETTERSON, Octavia Thompson, and Henry J. Thompson, Her Husband, James Wilkins, W. B. Runyan, Joseph C. Keyser, Richard H. Fries, Georgiana Isabel Caro, John B. Caro, Theressa E. Caro, Josephine Caro, Mary L. Caro, Irene C. Williams, Matilda Duval, Isabel E. Brosnaham, Geo. O. Brosnaham, Georgianna E. Kirk, John A. Brosnaham, Mary E. Brent and Her Husband, F. C. Brent, D. D. Shuttleworth and Charles Ahrens, John C. Lavallette, J. C. Petterson as Administrator of E. J. Caro, Dec'd, Geo. Bell, Louis Cobb, Lillie Johnson, Amy Castleberry, Louisa Dean, Louis Ross, Geo. Gammell, Reuben Frensey, Edward Davis, Eugene Cardenas, Raynon Campderos, Andrew Gant, Joseph Rodgers, Jerry Beck, B. L. Carle, Ed. Rowe, Cade Shackleford, Beverly, Milner, John Wood, Jemimer Sunday, Thomas Bagg, Jacob Harrison, Jos. Thompson and Elizabeth Thompson.

This cause coming on to be heard upon demurrer of R. H. Fries, J. C. Lavallette and J. C. Petterson, as administrator of

the estate of E. J. Caro, dec'd, to the bill of complaint, and upon motion by complainants for a final decree against the other defendants, except Edward Davis, Lillie Johnson, Geo. Gammell, Eugene Cardinas, Louis Cook, Andrew Gant, Joseph Rodgers, John Beck, Edward Rowe, Chas. Lepard, Chas. Rapanel, Cable Shackleford, Beverly Milner, John Ward, Cynthia Humphreys, Jos. Rogers and C. L. Carle, Henry Poinsell, I. H. Watts and Pleas. Davis, against whom a final decree has heretofore, to-wit: on May 23d, 1887, been entered,
91 and it appearing that a decree pro confesso for want of pleas, answer or demurrer, has after due a personal service, heretofore, to-wit: Sept. 3, 1888, been duly and lawfully entered against Isabella E. Brosnaham, John A. Brosnaham, Geo. O. Brosnaham, Georgianna E. Kirk, Daniel D. Shuttleworth, F. C. Brent and Mary E. Brent, his wife, and Charles Ahrens, and counsel for the complainants, and all the other defendants having been heard and their arguments and the pleading and proofs having been considered by this Court: It is ordered, adjudged and decreed:

That the demurrers of the said defendants, J. C. Petterson as admr. of the estate of E. J. Caro, dec'd, R. H. Fries and J. C. Lavallette to the bill of complaint be and are hereby sustained and the bill dismissed as to them.

That the Pensacola City Company, the joint stock association, was, prior to A. D. 1870, the owner in fee simple of the tract of land in the eastern part of the City of Pensacila, Florida, known as the Rivas or Chaubaud tract, containing..... acres and being in the large part of Section 8, T. 2, S. R. 29 West, according to U. S. government survey, and the Pensacola City Company, a corporation, successor to the said joint stock association, and the complainants and its other assigns still are the owners in fee simple thereof as against the defendants and all persons claiming or holding under or by or thrugh [through] the defts., except as to the portion hereinafter described as the property of J. C. Petterson, and Ramon Campderos, and that with the said exception the complainants and the other assigns of the Pensacola City Co. are entitled to the possession of said tract of land.

That the defendant, J. C. Petterson, has acquired title by the statute of limitation as against the complainant to that portion of said tract of land occupied by him or by his tenants at the beginning of this suit above more particularly described in the plat and deed attached to the answers of J. C. Petterson to interrogatories in this suit, and that this bill in this cause be and is hereby dismissed as to the said Petterson at the costs of complainant.

That the defendant, Ramon Campderos, has acquired title

as against the complainants since 1870 A. D., by the statute of limitations as to the portion of said tract of land occupied by him or his tenants at the beginning of this suit or more particularly described in the deed from A. V. Caro and Nancy L. Caro, his wife, mentioned in his answers of interrogatories in this suit, and that the bill of complaint in this cause be and is hereby dismissed as to the said Campderos at the costs of the complainants.

92 That as to the defendants other than the said Petterson, personally and as administrator of the estate of E. J. Caro, R. H. Fries, Ramon Campdero and John C. Lavallette and the defendants against whom a final decree as aforesaid has heretofore been entered, the interlocutory injunction granted and issued on March 5, 1887, and is hereby made perpetual, and that the said defendants and each of them, their attorneys, agents, servants, and all persons holding as tenants under them or any of them be and are hereby perpetually enjoined and restrained from interfering with the possession of the complainants or any assigns of the Pensacola City Company or of the tenants of any of them of the said property or any part thereof, and from assuming or asserting title to the same or any part thereof, from leasing or selling or in any way asuming [assuming] or attempting to assume any control over the said property or any part thereof from any person whatsoever, from attorneys, or paying rent to any other person other than the complainants or other assigns of the Pensacola City Co. or their representatives or assigns; from taking possession of the said tract of land or any part thereof, from refusing to deliver possession of the said property or any part thereof now held by them to the complainants or either of them upon demand by the complainants, or either of them; from cutting or injuring any shade trees or wood or timber upon the said tract of land or any part thereof; and from aiding, abetting, assisting, counselling or advising anyone in the commission of the before mentioned acts.

That the defendants, J. E. Brosnaham, John A. Brosnaham, Geo. O. Brosnaham, Georgianna E. Kirk, David D. Shuttleworth, Mary E. Brent and her husband, F. C. Brent and Charles Ahrens, do pay the costs of the proceedings in this cause against them, amounting to $10.50, and that the complainants do have execution against them therefor.

That the defendants other than those aforesaid and those against whom final decrees has been taken as hereinbefore mentioned do pay all the other costs of this cause, amounting to $397.07, and the fees of the receiver herein, amounting to $100.00, and of the guardian ad litem, John Eagan, $25.00, aggregating the sum of $522.07, and upon failure to pay the same

within ten (10) days from the date of this decree the complainant shall have execution therefor.

And it appearing from the report of the receiver, W. Fisher, Esq., appointed in this cause, that he has collected as said receiver the sum of $249 as rental from occupants of the
93 said tract of land, he is hereby directed to pay the same to the solicitors of the complainants for distribution among the complainants, after deducting therefrom the fees hereinbefore allowed him.

And it further appearing from the report of the said receiver that nemerous [numerous] persons have been in possession of portions of said tract of land during the said receivership but have not paid to the said receiver rental in full for said occupation, the said persons are hereby ordered and directed to pay the amount in arrears to the said receiver within twenty (20) days after notification by the receiver to them of this part of the decree, and if they do not pay within said time the said receiver shall report the said delinquents to this Court, the names of such persons, with the amounts due by them, are as follows:

B. L. Carle 3.00
Adam Lenox 19.00
Jeff Lennox 11.00
Dan Patterson 8.00
Geo. Lewis 1.00
Henry Williams (white).. 1.00
Henry Williams (col.)...16.00
A. Daniels 14.00
Sandy Brown 14.00
Burke Hamilton 13.50
Lewis Ross 16.00
James Williams 17.00
Thomas Hutton 2.00
Ransom Bailey and Mary Bailey 19.00
Joe Lennox 9.00
Polly Alexander 1.00
James Taylor 18.00
Mana Beck 19.00
Brooks Crumbs 17.75
J. W. Dean 17.25
Betsy Sunday 15.50
Nansy Moreno 5.00
Reuben Freeney 16.75
Wm. Currie 5.00
Nancy Johnson 16.00
Ed Davis (col.) 11.00
Charles White 12.00
John Scott 8.00
Phil Lennox 14.50
Caleb Shepard 4.00
Isom Vann 11.00
Beverly Milner 11.00
Ella Thompson 16.50
Jerry Beck 13.00
Clem Garner 12.50
Joshua Edwards 1.00
Joe Davis 1.00
Caroline Lennox 1.00
Peter Lennox 1.00
Alex Iggnas 1.00
Harry Smith 1.00
Thos. Baggs 1.00
Joe Thompson 1.00
John Scott No. 2.....19.00

J. F. McCLELLAN, *Judge.*

June 17, 1889.

STATE OF FLORIDA,
Escambia County.

I, A. M. McMillan, Clerk Circuit Court in and for said state and county, do hereby certify that the foregoing is a
94 true and correct copy of the original as remains of record in Minute Book H, page 259 of the public records in my office.

In testimony whereof I have hereunto set my hand and affixed my official seal this 5th day of Nov., A. D. 1901.

(Signed) A. M. McMILLAN,
Clerk Circuit Court,
By B. H. BURTON, *D. C.*

Witness: The Judge granted the application, but afterward after consulting with you, redecided as the complainant did claim this particular piece of property. Mr. Frater came to see about it and I told him it would not be safe to buy until he had your consent.

Mr. Caro did not claim as a Rivas heir, but as an employe of the Pensacola City Co. and purchased the property from Mr. Frater, on that account and I understood that Charles Aahrons was a party to the injunction suit, and a decree was filed against him to take the property out of him, but by this arrangement the decree was not understood to operate on the property owned by the Pensacola City Co. I got the complainants to consent to deliver the property to him and I bought it from Mr. Frater, it was not through Caro as a Rivas heir, but as an employe of the Pensacola City Co.

Defendants offer bill and answer to decree which is set out in words and figures as follows:

Bill Offered by Defendants—"Exhibit 6."

To the Hon. James F. McLellan, Judge of the Circuit Court of the First Judicial Circuit of the State of Florida, in and for the County of Escambia, in Chancery sitting:

The Bill of Complaint of W. H. Davidson, Walter Tate, personally and as Admr. of Sally L. Tate, Dec'd, Peter Knowles, C. C. Yonge, Sr., Louis Boley, Pensacola and Atlantic R. R. Co., a corporation of Florida, A. V. Clubbs, W. D. Chipley, E. A. Perry, and C. B. Parkhill and Thomas C. Watson, who are citizens and residents of Pensacola, Fla., Alexander Stoddart, N. Thurston, Fannie E. H. Haines, Electra B. Richards, Josephine C. W. Terry, Van Brugh Livingston and Alicia R. Booth and Wm. A.

Booth, who are residents and citizens of New York City,
and the Pensacola City Co., a corporation under and by
95 virtue of the laws of Florida, who sue for themselves
and numerous others, against J. C. Petterson, personally and as administrator of the estate of E. J. Caro, Dec'd, Octavia Thompson and Henry J. Thompson, her husband, James Wilkins, W. B. Runyan, Joseph C. Keyser, Ricarh H. Fries and John C. Lavalette, who are adults, and Georgiana Isabelle Caro, John B. Caro, Theresa E. Caro, Josephine Caro and Mary L. Caro, who are minor children of A. V. Caro, and Nancy L. Caro, all of whom are of the City of Pensacola, County of Escambia, State of Florida, and Irene C. Williams, and Matilda C. Duval, of the City and County of Mobile, State of Alabama, and others named in the bill and prayer.

The complainants allege:

That they are owners in fee by far the greater portion of the tract of land in the City of Pensacola, Florida, known as the Cebeaux or Rivas tract, and together with the persons for whom they sue of the whole of said tract.

That the said tract of land originally belonged to one Gabriel de Rivas, but the title thereto was divested out his heirs about the year 1817, by a legal and valid sale made under the authority of the Spanish Court in Pensacola, and by mesne conveyance from the purchaser at said sale became vested, on Jan. 13th, 1837, in the Pensacola City., a joint stock association, by which it was conveyed in the year 1870, to the Pensacola City Co., a corporation then organized under the laws of Florida, and one of the complainants, and the interests of the other complainants have been acquired from the said corporation.

That in 1837, upon the purchase of the said property by the Pensacola City Co., it went into possession of the same, and its grantors, mediate and immediate, the complainants have been in possession ever since, except as hereinafter stated. That it then had it laid off into lots, blocks and streets, and a plot thereof known as the Geo. E. Chase plan, and of other of its property made and printed, a copy of which is hereto annexed, and marked Exhibit "A," prayed to be made a part thereof, and that portions of the said property were then and subsequently sold by the said plan.

That the said Pensacola City Co. and its grantors, mediate and immediate, have ever since paid taxes upon the said property, except during the war between the States of the American Union, from 1861 to 1865.

That in the year A. D. 1870, upon the purchase aforementioned by the complainant, the Pensacola City Co., it
96 caused the said tract, together with other of its property, to be again laid off in lots, blocks and streets, and a plot thereof to be made known as the Harding and Lee plan, a copy of which is hereto annexed, marked "B," and prayed to be made a part thereof, and that by said plot it has made sale to said complainants of nearly all of the said tract, except what it has reserved for itself. That portions of said property owned by some of the complainants, respectively, according to said plan, is shown in the schedule hereto annexed as Exhibit "C," and prayed to be made a part hereof, and are in part occupied by defendants.

That from the time of the purchase by the Pensacola City Co. the Joint Stock Co., in 1837 the claim of it to the said property and its possession thereof remained unchallenged by any one, and the said acts of laying off, plotting, selling and paying taxes were done without protest, objections or molestation until A. D. 1872, when E. J. Caro, Matilda Duval and Irene C. Williams, claiming to be the heirs of the aforesaid Gabriel Rivas, brought suit in ejectment against one of the tenants of the Pensacola City Co., complainant, one C. M. Hooper, for the possession of a portion of the said tract of land.

That in said suit the said plaintiffs relied upon the title of the said Gabriel Rivas and their descent from him, claiming that the title had never been divested out of him and his heirs, and the said C. M. Hooper depended upon the title of his landlord, the complainant, the Pensacola City Company, derived as aforesaid; that before the said suit came to trial, the attorney for the said plaintiff, Richard L. Campbell, Esq., became convinced by the discovery in the Spanish Archives of West Florida, of the evidence of the divestiture aforesaid of the title out of the heirs of the said Gabriel Rivas, that the title was not in said plaintiffs, but in the Pensacola City Company, complainant herein, and declined to further prosecute the suit, but the said plaintiffs obtained other attorneys, and the suit after the avoidance of a trial as long as possible by the plaintiffs, in the suit, by continuances, dismissals and voluntary non-suits, came on for trial in the United States Circuit Court for the Northern District of Florida at Pensacola in 1879, and was then and there decided by verdict of and judgment upon the merits of the conflicting claims of title as aforesaid, in favor of the defendants, the said C. M. Hooper, tenant of the Pensacola City Co., complainant, and thereby in favor of the title of the complainant, and against

the pretended title of the said plaintiff, claimed from
97 the said Gabriel de Rivas, and that said judgment remains unreversed.

That up to the time of the bringing of said suit, no claim of title to the said property had ever been asserted by any of the heirs of the said Gabriel de Rivas, or by the father of the said A. V. Caro, E. J. Caro, Matilda C. Duval and Irene C. Williams, one Joseph E. Caro, who was the son-in-law of the said de Rivas, and the keeper of the Spanish Archives of West Florida, and was well acquainted with the title of the property, in Pensacola as any other man in it, the fact being that the said Joseph E. Caro was a party to the sale of the said tract of land by the authority of the Spanish Court in 1817, and that no assertion or pretense of claim was made until years after his death, which occurred in A. D. 1858 or 1859.

That at or about the time of the bringing of the said suit, the said E. J. Caro, A. V. Caro, Matilda Duval and Irene C. Williams began to and have continued to take other steps to assert a title to the said property by making numerous sales of portions of the same by putting tenants under them into possession of parts of the same, by causing tenants of the complainants to attorn to them, by breaking open houses, and breaking down enclosures, which had been erected by complainants, and putting their agents and tools therein to hold for them, and by substituting a new occupant thereof holding under them, whom the complainants would seek to dispossess, thus constantly changing the persons in possession in order to frustrate the complainants in their endeavor to obtain and retain possession.

That in order to settle the title to the said property to be without question in the complainants and to dispossess the said pretended complainants of a portion of the tract of which they had possession, the Pensacola City Co., in 1887, brought suit against the said A. V. Caro, E. J. Caro, Matilda Duval and Irene C. Williams in ejectment in the Circuit Court of Escambia County, Florida, which said suit in 1887, resulted in a verdict and judgment for the said Pensacola City Co., and another adjudication of the validity of their title to the said tract, the said suit having been tried and determined on the merits of the said pretended title of the said defendants as against the title of the Pensacola City Co., derived as aforesaid.

That in spite of the said adjudication upon the said title the said A. V. Caro, E. J. Caro, Matilda Duval and Irene Williams not only continued to disturb the possession of the complainants of the said tract by interference of their tenants and

putting into possession tenants under them, and by sales and attempts to sell the said property or portions of it, but also by themselves, their tenants and agents committed numerous trespasses upon the same and cut down and destroyed timber, wood and shade and ornamental trees thereon, and thereupon the said Pensacola City Co. filed a bill in the Circuit Court of Escambia County, Florida, in 18.., to enjoin the said A. V. Caro, E. J. Caro, Matilda Duval and Irene C. Williams from the further commission of the said acts of trespass and interference, and to quiet the title to the said property; that in the said suit a temporary injunction was obtained, and after due pleadings and proofs the same was made perpetual, enjoining the same persons as prayed, and declaring the title to the said property to be in the said Pensacola City Co. and its assigns.

98

That upon appeal by the defendants in said suit to the Supreme Court of Florida, the said decree was affirmed as to the said A. V. Caro, who was a resident of Florida, and in 1883 reversed, as to the said other parties defendant, because no service had been made upon them, they being non-residents.

That complainants are informed, believe and charge that during all this time the said A. V. Caro and his family wholly, and the said other parties to said suits in part, were living upon the proceeds of sales of portions of said land which they would through the said A. V. Caro, induce persons to purchase, and from the rents from the tenants whom they would put into possession, and from sales of wood cut therefrom.

That in order to continue the said means of livelihood, the said Matilda C. Duval, Irene C. Williams and E. J. Caro brought a bill in 1884, in the United States Circuit Court for the Northern District of Florida against the Pensacola City Co., and the said Nancy L. Caro, the wife of the said A. V. Caro (who, by some pretended means had, after the said A. V. Caro had been enjoined as aforesaid had become vested with his alleged interest in said property), the pretended purpose of the said bill being to have the said title adjudicated by the said Court, and to obtain an injunction against the said Pensacola City Co.

That in the said cause proofs were taken, and after numerous efforts by the defendants, the Pensacola City Co., to have the same tried and as numerous and strenuous efforts by the complainants to postpone the final adjudication and protract the litigation, the cause came on to be heard before the Judge of said Court, and the said injunction was refused, and the cause dismissed, and the Judge of the said Court delivered an opinion in favor of the title of the Pensacola City Co. to said

property and against the title of the complainants, a copy of which opinion is hereto attached, marked "D," and prayed to be made a part hereof.

99 That in order to enable them to carry on the said litigation, the said A. V. Caro and his brothers and sisters aforesaid, have from time to time, as complainants are informed, believe and charge, obtained money from divers persons to conduct the said litigation, promising to said persons large interests in the said land upon a successful termination of the litigation concerning the said land, they the said A. V. Caro and his brother and sisters, well knowing that the litigation can have no successful termination for them, but are desirous of prolonging the same for the purpose of gain therefrom.

That the defendant J. C. Petterson is one of the persons who has been so induced to advance funds for the prosecution of the said litigation, and who obtained and claims a pretended interest in the said property, and since the death of the said E. J. Caro (who has departed this life), has become the administrator of this estate, although he was not of kin to, nor a creditor of the said deceased.

That they have also induced, as complainants are informed and believe and charge, the defendants, James Wilkins, William B. Runyan and Joseph C. Keyser, to enter with them into the practices hereinbefore set forth of going into possession of parts thereof, of attempting to obtain possession of other parts of the said tract of land by putting tenants therein and by inducing by promises thereto and intimidations other the tenants of complainants to attorn them, and have contracted with the said James Wilkinson for the use of his money, and with the said William B. Runyan and Joseph C. Keyser for the use of their services in the connection aforesaid of their designs, and are nominally selling large portions of the tract to them for nominal sums of money.

That within the past six months the said persons have induced one Ephriam Pleasure, who went into possession of several acres of said tract as the tenant of the Pensacola City Co., to repudiate the said tenancy and to stand a suit at law for the possession of said premises, and that the said James Wilkins is paying the expenses of the said litigation, and that the defendants are continually and daily inducing others, tenants of the complainants, to refuse to recognize the title of the complainants, thus rendering necessary numerous suits by complainants to dispossess them.

That despite the injunction aforementioned against the said A. V. Caro, he has continued in the interference with the title

and possession of the complainants and has twice been punished for a contempt of the said injunction, and yet, notwithstanding he has given and is giving notice by publication, a copy of which is hereto annexed marked "E", in a newspaper in the City of Pensacola, of his intention on the 7th day
100 of March, A. D. 1887, to apply to the Judge of the Circuit Court of said County of Escambia for leave to sell the (pretended) interest of the said defendants, John B. Caro, Theresa E. Caro, Georgiana I. Caro, Josephine Caro and Mary L. Caro, his minor children by his wife, Nancy L. Caro (now deceased), in the said tract of land, and he is, as complainants are informed, believe and aver, the person who negotiates with the said Runyan, Wilkins, Keyser and others for their money and services aforesaid, and who still acts as agent for the other defendants, who pretend to be heirs of the said Gabriel de Rivas.

That there is being published in a newspaper of the City of Pensacola an advertisement, a copy of which is hereto annexed marked "F," and prayed to be made a part hereof, in the names of Octabia C. Thompson, a daughter of A. V. Caro, and Nancy L. Caro, offering to lease and sell portions of the said land, which said advertisement complainants believe and charge is at the instigation of the said A. V. Caro.

That in spite of the aforesaid decisions adverse to the pretended claim of the defendants, the acts hereinbefore charged against them have been continuous for years and still continue, so that though the complainants possess an undoubted title to the said portions of said tract as herebefore set forth, it is impossible by ordinary suits of law in trespass or ejectment to protect their said rights of possession, and that if it were possible it would require innumerable, vexatious, and expensive suits by each of them against each of the defendants, who fertility of resource in vexation, and in the evasion of the results of law suits seems to be under the leadership and guidance of the said A. V. Caro, inexhaustible.

That the action of the defendants aforesaid have rendered the property almost entirely unsaleable by the complainants, and that if such actions are permitted to continue as they have continued for the past fifteen years, not only will all the shade and other valuable trees be cut therefrom, but the said property will be utterly valueless to complainants because on [of] the inability to sell the same.

That within a week the said Joseph C. Keyser has published and is publishing in a newspaper in the City of Pensacola, the advertisement, a copy of which is hereto annexed, marked "H," and prayed to be made a part of this bill.

That the defendant, Richard H. Fries, is an attorney at law in the City of Pensacola, and counsels, advises and aides the defendants in their aforesaid numerous attacks upon and violation of the rights of the complainants.

That the following defendants, citizens and residents
101 of the City of Pensacola, are holding possession of portions of the said property as tenants of the aforesaid defendants, or some of them, and paying rents to them for their possession of the portions of the said tract, to-wit: Geo. Bell, Lewis Cobb, Lillie Johnson, Amy Castleberry, Louisa Dean, Louis Ross, Geo. Gammel, Reuben Freeny, ... Stevens, and the following citizens and residents of the City of Pensacola, who have acquired possession by the trespass upon the possession of the complainants have acquired, and hold the same under the said pretended title of the said A. V. Caro, E. J. Caro, Matilda Duval, and Irene C. Williams, to-wit: Edward Davis, Eugene Cardenas, Ramon Campderos, As. Gant, John Rodgers, Joseph Rodgers, John Beck, C. L. Carle, Chas. Reparel, Ed. Rowe, F. H. Watts, Cable Schakleford, Beverly Citner, Pleas. Davis, John Ward, Cnythinia Hennessey, Elizabeth Thompson, Jimmy Sunday, Thomas Bugg, John Harris, Henry Poisett, and Joe Thompson, and that the extent and holding of the occupation of said persons is shown by the spaces enclosed in the red lines upon the accompanying attached diagram, which is according to the said plan of Lee & Harding marked "G," and prayed to be made a part hereof.

That the defendants herein are entirely without the means or property to respond in damages to the complainants for the injury which they have already done to them by their acts aforesaid, or for that which a continuation of the said acts will produce, or to be made responsible for the rents which they collect from the tenants.

That the complainants charge that the injury to them by the said acts of the defendants is irreparable in the destruction of shade trees on said land, in the costs incident to the numerous actions at law in trespass, ejectment and unlawful detainer, made necessary by them in the damage to the title of said property, and in the total inability of the defendants by reason of their want of means to answer the damages thus occasioned by them, by their acts in the possession.

That to the end therefore that the defendants and each of them may answer the premises to the best and utmost of their knowledge, recollection, information and belief respectively, and that your Honor may declare the title to the said property to be in the complainants as hereinbefore respectively claimed by them, and the defendants, and each of them, their agents, servants and attorneys be perpetually enjoined from

interfering in any way with the possession of the complainants, or their tenants of their said property, and from asserting title to the same or any part thereof, from leasing or selling any part of the same, from receiving rent from any
102 one, or paying the same to any one other than the complainants for the use of any part of the same, from taking or holding possession of the same or any part thereof by themselves, their agents, or tenants, from cutting any shade trees, wood or timber upon the said land, from the collecting of the proceeds of any former sales or leases of the said land, from committing any trespass of any kind whatever, upon the said property and from advertising or counseling or aiding the defendants or any one else in the commission of any of the said acts; that a receiver may be appointed by your Honor to take possession of the lots and parcels of land and improvements thereon of the said tract which have been taken possession of by the said defendants and now held by them or their tenants as hereinbefore alleged, and to preserve and rent the same until further order of this Court, and that the defendants may be required to pay to the complainants all such damages as they may have sustained in the premises to be ascertained under the direction of this Hon. Court.

And that your Honor will grant unto complainants such other and further relief as in the premises may be meet and fit.

And complainants pray for process of subpoena according to law and the count of this Court to J. C. Petterson personally and as the administrator of the estate of E. J. Caro, deceased, Octavia Thompson and Henry J. Thompson, her husband, James Wilkins, W. B. Runyan, Joseph C. Keyser, Richard Fries, John C. Lavalette, Irene C. Williams, Matilda Duval, Geo. Bell, Lewis Cobb, Lillie Johnson. Amy Castleberry, Louisa Dean, Louis Ross, Geo. Gammel, Reuben Freeny, ... Steevens, Edward Davis, Eugene Cardenas, Ramon Campderos, Andrew Grant, John Rodgers, Joseph Rodgers, John Beck, C. L. Carle, Chas. Reparel, Ed. Rowe, J. H. Watts, Cable Schakleford, Beverly Milner, Pleas. Davis, John Ward, Cynthia Hennessey, Elizabeth Thompson, Jimmy Sunday, Thomas Bugg, John Harris, Henry Poisett and John Thompson.

And complainants will ever pray, etc.

W. A. BLOUNT,
Sol. for Complainants.

Peter Knowles, being sworn, says that the matters and things set forth in the foregoing bill as of knowledge are true, and those otherwise set forth he believes to be true.

PETER KNOWLES.

Sworn to and subscribed before me this 4th of March, 1887.
J. S. LEONARD, *N. P.*

103 I, B. B. Wilson, Clerk of the Supreme Court of the State of Florida, do hereby certify that the foregoing pages numbered from 1 to 15 inclusive contain a true copy of the original bill of complaint in the case of James Wilkins, *et al.*, appellants, *vs.* The Pensacola City Co., *et al.*, appellees, as contained in the transcript of record on file in my office in the case above stated, as certified under date of May 20th, 1889, by F. E. de la Rua, Clerk of the Circuit Court of Escambit County, Florida, with the seal of the Circuit Court of said county attached, the decision in said case being reported in volume 36 Florida reports, pages 36-61.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court, at Tallahassee, the capital, this 8th day of July, A. D. 1901.

B. B. WILSON,
Clerk of the Supreme Court of the State of Florida.

Exhibit "7."

Answer—Offered by Defendants.

Circuit Court, Escambia County, State of Florida—In Chancery.

W. H. DAVISON, *et als.*,
vs.
J. C. PETTERSON, *et als.*

The joint and several answer of James Wilkinson, W. B. Runyan, J. C. Keyser and Octavia Thompson and Henry J. Thompson, her husband, to the bill of complaint of the complainants in the above entitled cause.

These defendants reserving unto themselves all and all manner of exceptions to the said bill of complaint, for answer thereunto say:

That they deny that the complainants, and those for whom they profess to sue, are the owners in fee of the Rivas or Chabeaux tract.

That they admit that the said tract of land originally belonged to one Gabriel De Rivas.

That they deny that the title thereto passed out of his heirs by a legal and valid sale made under Spanish authority, or that under such valid sale and mesne conveyances the said property became vested in the complainants, Pensacola City Company.

That these defendants are informed that complainants claim that a valid sale, under Spanish authority, was
104 made to one Gregorio Caro, and that complainants claim title through an alleged deed from him; but these defendants are informed and believe, and so allege, that, at the time of the alleged sale, by Spanish authority, the said Gregorio Caro had already departed this life, and that, had he been living, he would not have been of an age, at the time of the alleged sale by him, to acquire or dispose of real estate according to the law of Spain then in force in Florida.

That these defendants deny that the said Pensacola City Co. in 1837, went into possession of said tract or that the complainants have been or are in possession thereof except as follows: That in 1883, the complainants W. H. Davidson, and in 1885 the complainant W. Tate went into possession, illegally, of small portions of said tract, and the Pensacola & Atlantic Railroad Company have run their track through said tract without claim or title or obtaining the permission of any one authorized to give it, and the complainant L. Boley, has exercised acts of ownership over a few lots, that, as to the portion taken possession of by the said W. H. Davison, he was ousted by one, Higgins, of a portion thereof, and upon a trial before the County Judge, the complainant W. Tate, then being such County Judge, a decision was rendered in favor of the said Higgins, and against said Davison, that the said Davison thereupon appealed to the Circuit Court of the said County, and the Judge thereof, holding that a trial de novo should be had in the case, the said Higgins, by his attorneys, refused to participate in the trial, which thereupon proceeded ex parte, and a verdict and judgment passed in favor of the said Davison, and that the Supreme Court of the State now has under advisement a petition for a writ of probition to the said Circuit Judge against the enforcement or execution of the said judgment of this court.

That most of the portion of which the said Tate took possession was so taken by means of a frail fence which soon fell down and has never been replaced.

That the said lots over which the said Boley has exercised acts of ownership, were bought by him from one W. W. Wilkinson, who purchased the same from Mrs. Irene G. Scarritt, was bought from Rivas heirs, who at the time as she well knew, were asserting title thereto adversely to the pretended title of the New City Co.

That if the complainants or either of them have ever had any possession or portion of said tract, other than as above stated, these defendants are not aware of it, and demand proof thereof.

That these defendants admit that the said Pensacola City Co. had lines run upon and plats made of said tract, and alleged that the same was done forcibly and against the protest of the Rivas heirs.

That these defendants are informed and believe, and thereupon allege that it is not true, that complainants, Pensacola City Co. have had said tract laid off in lots and blocks or streets except in so far as making plats thereof constitutes such laving off.

That these defendants admit that complainants have of late years attempted to make and receive sales of parts of the said tract, and def'ts. allege that in so doing they have trespassed upon the rights of these defendants, and those through whom they claim, as the legal owners of or representatives of the owners of the said tract of land.

That these def'ts. deny that, from 1837 to 1872, the claim of The Pensacola City Company to the said tract and its possession remained unchallenged, but allege that on the contrary the said Pensacola City Co. was not in possession thereof, and the said tract was of such slight value, being a wilderness, that the heirs of Gabriel De Rivas left it unoccupied, but always claimed title to the same, and intended to assert their title and take actual possession thereof when the tract should become of sufficient value to justify the expense incident to such fact.

That these def'ts. allege that about the year 1870, the said tract began to increase in value, and be sought after by persons in search of humble homes, and the Rivas heirs began to take possession of parts of said tract under their title as heirs and to lease parts thereof, which they did openly and were not for some time opposed or molested by anyone, though representatives of the said Pensacola City Company were in Pensacola, and aware of such acts of ownership on the part of said heirs, that the agent of the said heirs put into possession of a part of said tract one Dan. Washington, as their tenant, but he was forcibly ousted by the said C. M. Hooper, mentioned in said bill of complaint that, for the purpose of dispossessing the said Hooper, said suit in ejectment was brought in 1872, by E. J. Caro, Matilda Duval, and Irene C. Williams, heirs of the said Gabriel De Rivas, against the said Hooper, that these defendants admit that in said suit the plaintiffs, among other things relied on their title as heirs of Gabriel De Rivas, and the said Hooper, defended on the alleged title of the Pensacola City Company, and that the said R. L. Campbell abandoned the suit, but these def'ts. are not fully advised as to his reasons for so doing, and admit that when said suit
106 was brought said plaintiffs and their said attorneys were in ignorance of the existence of the documents

which were afterwards claimed to have been found and to evidence a sale of the property by an alleged administrator of said Gabriel De Rivas to said Gregario Caro, and therefore, they, the said plaintiffs in said ejectment suit, and their said attorney had had no occasion to investigate the validity of such alleged sale, and it was not until long thereafter, and after the said attorney had abandoned the said suit, that it was discovered that said Gregario Caro, was dead at the time of said alleged sale to him, and if living he would not have reached an age at which under the Spanish law he could have acquired or sold property.

That these def'ts. deny that by continuances, dismissals and voluntary non-suits, the said plaintiffs sought to evade a trial of the said ejectment suit. That the case was several times continued sometimes on their motion and sometimes on the motion of the def'ts. and always for good and sufficient reason in the opinion of the Court.

That these def'ts. admit that in 1879, the case came on trial as alleged in the bill, and a verdict and judgment went against the def'ts. therein, but allege in the bill, that the said trial was not a fair and impartial one, and a motion for a new trial was at once filed and made, and handed to the Judge of said Court, on the ground that he was during the trial and when he charged the jury, physically and mentally incapacitated to such a degree as to vitiate the verdict, that the motion was filed and continued for the term, and afterwards with the consent of the said Judge, and all parties interested, it was withdrawn from the files, and another at a subsequent term, substituted therefor, omitting the said ground above stated, and a number of important documents used at the trial, having been lost or mislaid, so that argument of the motion could not be intelligently made, the motion was again undisposed of at the filing of the bill herein, and that at the time of the trial of the said ejectment suit, the plaintiffs therein and their attorney, therein were still ignorant of the fact of the age of said Gregario Caro, and his death before the date of the alleged sale by him, and the said Judge in charging the said jury herein, instructed them that both parties had failed to show any legal title.

That these def'ts deny that the said Joseph E. Caro did not assert title to the said tract to be in the heirs of Gabriel De Rivas, but on the contrary these def'ts. are informed and believe and so allege that he always claimed and asserted that the said heirs had title to the said tract, and would act upon it when the land became valuable.

107 That these def'ts. admit that said E. J. Caro, A. V. Caro, Matilda Duval and Irene C. Williams began to

and have continued to take steps to assert their title to the said property, have made sales of parts thereof, have placed tenants thereon, and by every other legitimate and lawful means in their power, have taken possession and control of the said tract, and have been ever since, in virtual possession of the entire tract, with the exceptions above stated by means whereof, as these def'ts. allege, title by adverse possession has accrued to said heirs, and these def'ts. claiming through them, if such title were needful in aid of the title they had before as above set forth.

That these def'ts, deny that they or the heirs of the said Gabriel De Rivas, or others claimed under, through or with them, have been guilty of asserting their title by breaking open houses, or by tearing down enclosures, or by substituting tenants for others against whom actions had been brought, with a view to frustrating the complainants or any one else in their endeavors to obtain possession.

That these deft's admit that the said Pensacola City Co. in 1877, brought suit against the said A. V. Caro, E. J. Caro, Matilda Duval and Irene C. Williams in ejectment in the Circuit Court of Escambia County, State of Florida, which said suit resulted in a verdict and judgment for the said Pensacola City Co. But these def'ts. show unto your honor that before the time when the suit could be tried had arrived, the Hon. A. E. Maxwell became Judge of said Court and declined to try the said case because he was disqualified by interest from so doing, and entered an order accordingly, that thereupon, from term to term, the suit was continued, an order being entered in the minutes each term that the Judge being disqualified the case was continued and in the meantime the defendants attorney was disbarred from practicing in the said Court, and as the Judge continued and was likely for years to continue on said bench, said def'ts employed no other attorney, as they were poor and there was nothing to be done in the case after the said disqualification of the said Judge became known.

That at the .... term of said Court, 1881, the said Judge was still on the bench no order was made announcing the termination of his disqualification, and no notice was given to the def'ts. in the case that such disqualification had ceased, and, in law, such disqualification could not have ceased so as to authorize said Judge to try the case, but notwithstanding the premises the said case was at said term tried by said Judge, in the absence of the defts. and their attorney, and a ver-

108 dict and judgment was rendered as aforesaid, that the def'ts are informed that said Judge claimed that his disqualification had ceased because he had disposed

of his interest in the said Pensacola City Co. but these defts. show unto your Honor that such disqualification could not be so removed and that said verdict and judgment are void.

That these def'ts. admit that thereafter said A. V. Caro, E. J. Caro, Matilda Duval and Irene C. Williams continued to assert title to the said property, and put their tenants in possession, and a bill was filed by the said Pensacola City Company in the Circuit Court of Escambia County, Florida, to enjoin them as alleged in said bill of complaint herein, and that a temporary injunction was granted and a decree was, upon appeal, affirmed by the Supreme Court as to said A. V. Caro, and reversed as to the said other def'ts but these def'ts. show unto your honor that neither of them is asserting any title or right under the said A. V. Caro, or any title, in any manner affected by said decision of the Supreme Court, yet these def'ts further show unto your Honor that the said decree of the Circuit Court was and is void, because the said judge at first declined to hear the said cause because he was disqualified as above stated, and entered an order accordingly, and afterwards did try the same and render a decree therein as above stated.

That these def'ts. admit that during the time the said suits were pending, the parties thereto were, as they had a perfect right to do, continuing their acts of the ownership and realizing money from the sale of parts of the land, and that a bill was filed in the Circuit Court of the United States by said Matilda Duval, Irene C. Williams and E. J. Caro, against the said Pensacola City Co. and Nancy L. Caro, the wife of the said A. V. Caro, to have the title adjudicated and put an end to the annoyance which they had been subjected to by said Pensacola City Co. and those who were acting with them; that the case came on for hearing and the Judge of said Court entered the remarkable and unprecedented order or decree of which a copy constitutes Exhibit "D" of the bill in this cause. And these def'ts. show unto your Honor that so much of said order or decree as assumes to pass upon the title of the parties to said suit is void upon its face.

That these defts. admit that to meet the fight made for the said property by the said Pensacola City Company and persons acting with them, all being wealthy and influential, the said heirs of Rivas were compelled to raise money by selling parts of said tract to persons who had means and faith in their title, that J. C. Petterson, James Wilkins, W. B. Runyan and Joseph C. Keyser, have in this way acquired inter-
109 est in the said property, and have used their influence in legitimate and lawful ways to protect the interest

of themselves so acquired, and with those with whom they were associated in resisting the attempts of complainants herein to unlawfully deprive them of their property.

That these def'ts deny that the said Ephriam Pleasure is or has been a tenant of the Pensacola City Co. but allege that on the contrary a trial of that very question, between him and the said company, before the Judge of said County, a verdict was rendered in favor of said Pleasure who has been a tenant of said Rivas heirs ever since 1870.

That these def'ts deny that they ever induced tenants of complainants to renounce tenancy to them, except by asserting title to the property and expressing the intention to dispossess persons denying the same, and these def'ts. show unto your Honor that said A. V. Caro, is not a party to this cause, and that they are not responsible for, or their rights affected by his giving the notice referred to in the bill of complaint herein as Exhibit "E", or by his connection with the giving of the notice referred to in the said bill as Exhibit "F", though these defts. allege that the said Octavia Thompson has a perfect right to sell and lease parts of the tract by virtue of the title she possesses therein, and these def'ts. allege that they and neither of them hold or claim title to the said tract or any part thereof under, or through or in connection with the said A. V. Caro, and they protest against the industrious endeavors of the complainants to prejudice their proposition and title by allegations injected into said bill touching him, his acts and the decree against him and his incarceration for violations thereof.

That these def'ts. deny that in any act they do or claim their assert they are acting upon any suggestion other than their own desire to avail themselves of property and to realize legitimately upon it, and they deny that they are asserting or claiming title under or through said A. V. Caro, and they deny the said A. V. Caro is their or either of their agents.

That these def'ts deny that in anything they have done, they have sought to be vexatious or evasive of the results of law suits, but they allege that on the contrary they have, ever since they obtained their title to said property, been willing and anxious to test their rights with the alleged rights of the complainants, as it is to their interest that an end should be put to the complainants' false and vexatious claims of ownership, and they deny the alleged leadership and guidance
110 of A. V. Caro. They deny that they or either of them have cut or caused to be cut the shade or other valuable trees from the said tract of land, or that it is their or either of their intentions so to do, but on the contrary it is, and al-

ways has been since they have acquired their title, to their interest to refrain from the commission of any act causing the said tract to depreciate in value.

That they allege that said notice by said J. C. Keyser, Exhibit "H", was published by him as agent for James Wilkins for the purpose of protecting his rights and interest in said property.

That these defendants deny that said tenants in said bill of complainant named hold their tenancy under the said A. V. Caro, E. J. Caro, Matilda Duval or Irene C. Williams, but allege that they hold the same under James Wilkins; and these def'ts, deny that they are without means or property to respond in damages should the title to said tract be adjudged to be in the complainants herein; but allege that they are amplly able the complainants herein; but allege that they are amply able cient for the purpose.

And that they deny all damage to the complainants, or either of them by these def'ts. or their agents.

And these def'ts. have fully answered, pray to be hence dismissed with their reasonable costs. And, as in duty bound, will ever pray, etc.

JAMES WILKINS,
JOS. C. KEYSER,
HENRY J. THOMPSON,
W. B. RUNYAN,
her
OCTAVIA x THOMPSON,
mark
JNO. C. AVERY, *Solicitor.*

STATE OF FLORIDA,
Escambia County.

Personally before me came James Wilkins, Jos. C. Keyser, W. B. Runyan, Octavia Thompson and Henry J. Thompson, who being sworn, says each that the foregoing answer is true.

JAS. WILKINS,
WM. B. RUYAN,
JOS. C. KEYSER,
her
OCTAVIA x THOMPSON,
mark
HENRY J. THOMPSON,

111 Sworn to and subscribed before me this 29th day of April, 1887.

M. P. De RIOBRO,
[NOTARIAL SEAL] *Notary Public.*

STATE OF FLORIDA,
Escambia County.

I, A. M. Mc Millan, Clerk of the Circuit Court in and for said State and County, do hereby certify that the foregoing is a true and correct copy of the original as remains on file in my office.

In testimony whereof, I have hereunto set my hand and official seal this 5th day of November, A. D. 1901.

A. M. McMILLAN,
[SEAL] *Clerk of the Circuit Court,*
By B. H. BURTON, *D. C.*

The defendants by their counsel, during the trial of said cause before the jury and the Honorable Charles Swayne, Judge, in this Court, and while the jury was still at the bar, proceeded to offer in their behalf a large mass of documents in block, whereupon counsel for plaintiffs objected to said manner of offering said documents, claiming that they desired that said documents be offered by one, and submitted to them for inspection and adoption, and that the Court should rule on the admission of each document as offered, as no omnibus offer of that kind was permissible.

Whereupon the Court stated, that it would permit the offer of all said papers consecutively, at one and the same time, subject the inspection of all of said papers and the right to object when the counsel had concluded their offer. "It was agreed by counsel for plaintiffs and defendants that the various Spanish documents introduced by each side came from the custody of R. L. Scarlett, Surveyor General, United States, Keeper of the Archives, that he was Custodian in 1898 and that the Archives received from him this morning by mail and submitted to counsel by both sides, came from his custody."

Whereupon counsel for the defendants offered in evidence in their behalf as follows:

First. The original Spanish will of Gabriel De Rivas, which document is set out in words and figures as follows:

En el nombre de Dios, todo poderoso, que vive sis principio
y Reyno sin fin Amera: se pon quantos esta carta de
112 testamento, ultima y postrero voluntadvi— n como yo
Gabriel de Rivas vecino de esta Plaza natural de la ciudad de Sevilla, hijo legitimo, de Antonio y de Flora del Caro, naturales y recinos de la mismo ciudad, losquales mose, Si viven por hacermuchos anos que, ns he tenido noticio de ellos, hallam....e enfermo en cama en wei entero Juicio memoria, ye en tendimienta natural tal que Dios nuestro Sor,

ha sido servidodan....creyendo como perimento confindo mente creo en el alto y soverano miterio de la Santisima, Trinidad, Padre, hijo, y Espiritu Santo, tres personas realmente, distinta, y una en esencia verdadera, y en el de la encarnacion del, verbo deviono hecho, hombre, para nuestro, remedio: en cuya fe; y crehencia he vivido y protesto hacerle hosta morer trimendo la muerte que es natural a toda criatura su hora muerta previendo que ha de llegos la mia, quiezo hacer mi testamento, y para Su mayor direcion invoco por mi Abogado a la saberana, Rey na de los Angeles Maria Santisima, Madre de Dios y senora, nuestra, y le suplica que interceda por mi, con su precioso hijo perdone la gravedad de mis culpas, y ponga mi, Alma, en carrera de Salvacion, con cuya suplica....oferta y divina, invocasion lo ordeno en la forma seguiente:

Primeramente encomiendo mi Alma, al mismo Dios y Sor, que la crio y redimio con elprecio y valor, infinitode su preciosa sangre, Pasion y muerte El cuerpo mando a la tierra de que por formado, y que se me de sepultura en el campo santo, de los feeles en el modo, y forma, que dispuciere mi Albacar, a cuya desposicion dejo, lo demar de mi entiero, por ser asi mi voluntad.....

Item: Mando se me degan las tres misas del Alma por el descanzo, de la mia y que se de de limosna, dos reals por una ves a cada una, de las mandar forzosas con que los separo, de mis bienes por ser a mi voluntad.....

Item: declaro ser casado segun, orden de nuestra, S—ta, Madre iglesia catolica Apostolica de Roma, de cuya matrimonio conMaria Moreno, he tenido siete hijos, nombrados, Antonia, Maria, Josefa, Paulas, Juana, Gabriel, Agueda, y Leonardo de Rivas, para que conste.....

Idem: Declaro tener por mis bienes la casa, en que estoi alaxada, con mi familia, la contigua ocupada actualmente, arpanes por Pablo Granpera, y tres cientos de tierra, situades extramuros de esta Plaza.....

Item: Declaro que se me deben, varios cantidades, de dinero, tanto por el Rey O su Real haziendo como por distintos, particulares, las que encargo, a mi Albazea las cobre haziendo quantas diligencias sea zuce sarias al efecto.....

Item: declaro que devo a varias personas destintas cantidadas que constande mis obligaciones o recibos, yruego a
113 mi Albazea las pague, luego que cobre lo que se me debe, como que itene perfecto conocimi de las que son por haberlas firmado por mi.....

Item: Nombro por curador adlitem, de mis hijos menores

a Dn. Eugenio Sierra, practicante Mayor del Real Hospital de esta Plaza, lo que asi declaro por ser mi voluntad.....

Idem: Nombra por mi albazea, y tenedora de bienes, a mi gerenida consor te, Maria Moreno, relevandola de todo fiansa para que por si misma, y sin entervension, de la justicia proceda a dar cumpluni ente en todas sus partes a esta mi ultiva voluntad.....

Item: Declaro, Instituyo y nombre por mis unicos, y universales heredoros a los referidos, mis hijos, de todos los bienes que me correspondan satisfechas mis deudas, y los seis cientos pesos, de la dote de mi referida consorte, para que conla bendicion de y la mia los hayan y hereden por iguales partes por ser asi voluntad.....

Item: Declaro que de los seis cientos p-s, de que soy responsoble por la date de eui esposo ha recibido esta tres cientos y cinquenta pesos, pesos en un negro nombrado Franci-s, Fran-es, para que conste.

I revoco y anula, doy por nulos y chanes balas quales guerara otros tertaeruntos cadicilos antes de este haya hecho pos escrito to, o de alabra los que quieno no valgan mi hagan fe en juscio, ni fuera de el, salos este que al presente otorso en aquella via y prima que una haya lugar en derecho en cuya testimorio es cribo esta carta de testamento en la Plaza de Panzacola a viente y siete de Febrero de mil ocho cientos siete, siendo testigos Dn. Matar Cervera, subt eniente del Regimento de la Lusiana, Dn. Jose Garcia, Capetillo, Dn. Bernarda Molina y firmando a mil ruigo, Dn. Jose Maria de la pena.

ARUEGO de GABRIEL de RIVAS por
no saber firmar.
JPH. M a, de la PENA.

MATHIAS CERVERA,
BERNARDO MOLINO,
JOSE GARCIA CAPATILLO.

114 "*Exhibit* 8."

Defendants offer a certified copy made by R. S. Scarlett of the will and probate thereof, which document is set out in words and figures as follows:

G

Panzacola Ano de 1808.

Delig[s] testametarias

Testamentaria del Defunto Gabriel de Ribas.

el Sr.
Governadr,
Maria de Rivas

Testigos
Dn. Pedro Lamadrez y
M Domingo Sausa.

En la Plaza de panza a treinta de Abril de mil Ochocientos Ocho Yo Dn. Vizente Folch, y Juan Coronel de los Realas exercitor Governador Politice y Militar de esta Prova de la Florida Ocidental p-r SM Inspetor de las Tropas Veteruas y Milicias de ella Vice patrones Real. Jues Sub delegada de la superintendencia general de Correos de Havriandome adbertido D-a Maria Moreno havia fallerido, Su Marino el dia anserion el que tenio hecho su Testamento serrado, mande pase se el Sr. Auditor de guerra acompanado de los dos Testigos de Asistancio a la casa de la vunda para que le entregase dicho Testamto, y que onsu vista forma lise todas las diligencias, que correspondona quien desde luego las cometo por mis muchas ocupaciones, y por falta de Escribano real y Publica nombro a Don Pedro de la madrie y Domingo Sausa. los que enterados del nombramiente aceptaron Juraron, de fidelidad y firmaron de que Certifico.....

VIZ'TE FOLCH.

PEDRO LAMANDERY,
VIZ'TE FOLCH,
DOM.... SAUSA.

En la ante dicha Plaza de Panza, a treinta de Abril de mil Ochocientos Ocho as envirtud de la comicion que le hes anferida estando en la sala de su estudio el S..r. Carlos Hernandes y Barrutia comparecio anto Iho Senor D..n, Franco Gonzales de Fonte a quien per ante nosotros los testigos de asist..a se le recebio juramento en toda forma de derecho sele puro de manifesto el plioga serrado y sellado, y pregunta si la firma que se halla en Su Cubierta, y dise Franco Gonzales de Fonte, es la mismo que .....bra, hasen y qual fue
115 la Causa de havarlo hecho Iveo: Que esciento la firma y letra hes de su propio Puno que la pusopor haverlo

hecho avesar el difunto fuese ashu Casa. y que haviendo ido a ella le puso de presente dicho pliego Forrado, expresandole era Su testani—te, y ultima voluntad qc le hiceira favor de firmar ensu Cubierta como tal Testigo, que Hes quanto puede ecir en el particular que hes de mayor de veinte y cinco, anos firmando de con Ihro S..r, Aud..r. y nosotros de que damos Fee.....

FRAN..CO GONZALES de FONTE,
DOMIN..O, SAUSA.

HERNANDES
PEDRO de LAMADRIE.

Seguida m-te, Comparecio ante el S-r Aud-r de Guerra D-n, Antonio Montero, vecino de esta Plaza a quien dicho S-r, recibio Turamente que Hijo enforma de derecho y hosiendosole presentadoel pliego se llada y serrado con siete marras de Loce donde se halla, Firmado en sia Cubierta y dise Antonio Montero y pregunta do Si fue el mismo que la Suberibio y Si el defunto le dixo era Su testam—to y ultima, boluntad Dixo, que es de su puno y letra, y que el Bifunto, se lo expreso suplican dole firmase, sobre su cubierta que es lo que puedas decir de la layo, y expresa estor bien escrita que hes mayor de edad y firmo con dicho S-r Auditor y nosotros los testig-s, de acist-a, de que damos fee.

ANTONIO MONTERO,
PEDRO LAMADRIE.

HERNANDES,
DOM-O, SAUSA,

Incontinente m-te comparecio ante dicho Senor Auditor, y nosotros los ante dicho Senor, y nosotros los testigos el asistencia Romon Santiaga y sele recibio y uramite Segundro, y haviendosele manifistado el pliego serrado y sellado y preguntado Si havie suberito en el y Si he Su firma dixo ser dese puno, y letra, que firmo en arruegadel defunto que esas le splico lo hisiese peu era Su testam—to, y ultima voluntad, que les quanto tiene que decir sobre el particular sele layo y firmo expresardo scr Mayor de treinta y cinco, anos, con dicho Senor y nosotros de que damos fee.

RAMON SANTIAGO,
PEDRO LANSDRI.

HERNANDES,
DOM-O SAUSA.

En el mismodia mes y ano, comparecio ante el, Senor, Aud-r, y nosotros los Testig-s, de asistencia, Jose M-a, Mesa, y
116 sele recibio, Juramente que hijo en forma dedro y puar-tosele de manifesto el pliego serrado, y sellado, donde se halla Su nombre y appellido; y pregun Si, fue, el que lo sub-crivio dixo que, es de su puno y, letra, que la estempo en la cubierta del pliego, a ruego del Difunto Rivas por, decirle este era, Su testam..to y ultima voluntad, que no tiene mas que decir sobre, el particular sele leyo, y firma con dicho S..r, y nosotros de que, damos fee, que hes de Mayor Edad.....

JOSE ITT-A ITTENA,
JOSE MO NUSA,
PEDRO LAMADRIE.

HERNANDES,
DOMINGO SAUSA.

testig-s, de asistencia Dn. Fohelipe prieto segundo Guarda Al-masen a quien dicho Senor le recibio, Juram..te que hijo, segun derecho, y habia ndosele puesto, de manifesto el pliego serrada y sellado, que entrego, D..a, Maria Moreno, y Se halla firmado ensu, cubierta Felipe Prieto Dixo que la, firma y letra, esdesa-mis puno que la subcribio, por haverselo suplicado el difunto, espresando le era Su testam..to, y ult ima voluntad, que es lo, que tiene que decir enel particular sele leyo, y dixoi estar conforme, que es de veinte y, nueve anos, de eded, firmando con Iho Senor, y nosotros los, testigos de acistencia, de y e damos fee.

FELIPE PINCTO,
DOM-O, SAUSA.

HERNANDES,
PEDRO de LAMADRIN.

Comecutiva mente con parecio ante el S-r, Auditor de Guerra, y nosotros los testigos, de acistencia D..n, Pablo Granpera uno delos testigos que suberibieron en la cubierta del, testam..to de el Defunto Ribas y, haviendosele, recibido juramen..to, segun derecho y puestele de manifiesta el pliego serrada y sel-lada, Dixo que la letra y firma, y dise Pablo Granpera, es de su puno y letra la que estampo a ruego, del defunto, que este le dijo era, Su testam..to y ultima boluntad, que es quanto firmo que decir sele leyo y expreso, estar conforme que es de quar-enta y quatro anos, firmando con otro S..or, y nosotros deque, damos fee.....

PABLO GRANPERA,
PEDRO de LAMADRIE.

HERNANDES,
DOMINGO SAUSA.

117 En el mismo acto comparecio Testigos de acistencia, D-n, Manuel de Lara, a quien dicho Senor le, recibio, juramento, pr, ante nosotros, los subcritos testig..s, segun dro y haviendosele puesto de mars, fiesto el pligo serrado y sellada, en el que Se hallava, firmado sobre Su subierna, y preguntadole Si era su firma y si el declarante asistio, al testam..te, ofue llamado por el difu to que le expreso, ser Su testam..to, Dixo quethes Su firma, que fue llamadopor, por el testadose p-a, que firmase ensu cubierta que, el mismo defunto le expreso era, Su testam..to, y ultima voluntad, que en aguel acto estava ani paresen, ensu entero, Jucio, y Caval memoria, que es quanto tiene, que, desir sobre el particular que lo dicho es la vendad vajo el juram..to, que lleva hecho sele leyo, y firmo con dicho Senor, y nosotros los testigos de acistencia de que damos fee,

.....

MANUEL D. SAVAL.
DOM..O, SAUSA, PEDRO LAMADRIE.

Vistas las declaraciònes antesedents, y resultandocomprarada la indentedad, del Pliego que se dire contener el Testamento etorgado p-r, Gabriel de Ribas, prosedase asu apertura y publicacion en precensia, de los testigos.

FOLCH, HERNANDES.

Provego la Els-r, D..n, Vitente Folch. y Juan Coronal delos, Reales exercitos Governadoe Politico y Militar, de esta Prov....a, dela Florida occidental, p..r, S. M. que lo firmo con dictamen del S..r, Aud..r, de Guerra de Iha Prov....a, en Panz...a, a treinta de Abril demil, ochocientos, echo.

DOM..O, SAUSA. PEDRO LAMADRIS.

Nosotros los, Abajo firmados decimos, que haviendo sido llamados por Gabriel de Rivas, a quien perfectamente con occinos la en contramos, enfermo en cama, pero al parecer en su entero firmo memoria y entendionto natural, el qual nos enseno, este pliago cerrado con siete senales de lacre, en la cubierta, disiendonos que, era su testammento, ultimo y postrimera voluntad, que queria, se abriese y publicase despues de su fallicemiento, y que se cumplicse y executase quanto en el tenia, despuesta, que ponia, hecha la protestacion, de la fee, dupuesto Su entiero y nombrado herederos y Albacea, y nos

eago que fuesemos testigo de esta su declaracion; y para
118 que couste lo firmanos en esta plaza de panzacola a viente y siete de Febrero de mil, ochocientos siete.....

FRAN..CO, GONZA-L. de FONTE,
como testigos
ML. D. SAVA,
ANTONIO MONTERO.

a M
JOSE M ,MESA .
RAMON SANTIAGO,
PABLO GRANPERA,
FELIPE PRITO.

Offered by Defendants, "*Exhibit* 7" No. 2.

En el nombre de Dios, todo poderoso, que vive sis principio y Reyno sin fin Amera: se pon quantos esta carta de testamento, ultima y postero voluntadvi.. n como yo Gabriel de Rivas vecino de esta Plaza natural de la ciudad de Sevilla, hijo legitimo, de Antonio y de Flora del Caro, naturales y vecinos de la mismo ciudad, losquales de, Si viven por hacermuchos anos que, no he tenido noticia de ellos, hallem....e enfermo en cama en mi entero nicio memoria, y en tendimienta natural tal que Dios nuestro S-or, ha sido servido dan creycudo como fermemente creo en el alto y soverano misterio de la Santisima, Trinidad, Padre, hijo, y Espiritu Santo, tres personas realmente, distintas, y una en escencia vendadera, y en el la encarnacion del, verbo devino hecho, hombre, para nuestro, remedio: en cuya fe; y crehencia he vivido y protesto hacerle hosta morir temiendo la muerte que es natural a toda criatura su hora muerta previendo que ha de llegos la mia, quiezo hacer mi testamento, y para Su mayor direcion invoco por mi Abogada a la saberana, Rey na de los Angelos Maria Santisima, Madre de Dios y senora, nuestra, y le suplica que interceda por mi, con su precioso hijo perdone la gravedad de mis culpas y ponga mi, Alma, en carrera de Salvacion, con cuya suplica.. oferta y divina, invocacion lo ordeno en la forma siguiente:

Primeramente encomiendo mi Alma, al mismo Dios y S-or, que la crio y redimic con elprecic y valor, infinitode su preciosa sangre, Pasion y muerte El cuerpo mando a la tierra de que por formado, y que se me de sepultura en el campo santo, de los fieles en el modo, y forma, que dispuciere mi Albacea, a cuya disposicion dejo, lo demas de mi entiero, por ser asi mi voluntad. .....

Item: Mando se me digan las tres misas del Alma por el

descanzo, de la mia y que se de de limosna, dos reals por
119 una ves a cada una, de las mandar forzosas con que los separo, de mis bienes por ser asi mi voluntad.....

.....

Item: declaro ser casado sagun, orden de nuestra, S-ta, Madre iglesia catolicia Apostolica de Roma, de cuya Matrimonio con Maria Moreno, he tenido siete hijos, nombrados, Antonio, Maria, Josefa, Paula, Juana, Gabriel, Agueda, y Leonardo de Rivas, para que conste. .....

Item: Declaro tener por mis bienes la casa, en que estoi alexado, con mi familia, la contigua ocupada actualmente, arpanes por Pablo Granpera, y tres cientos de tierra, situado extramuros de esta Plaza. .....

Item: Declaro que se me deben, varios cantidades, de dinrdo, tanto por el Rey O su Real hacienda como por distintos, particulanes, las que encargo, a mi Albacea las cobre haciendo quantas diligencias se a nese sarias al efecto. .....

Item: declaro que devo a varias personas distintas cantidadas que constan de mis obligaciones o recibos, ruego a mi Albacea las pugue, luego que cobre lo que se mi debe, como que tiene perfecto conocimi de las que son por haberlas firmado por mi. .....

Item: Nombro por curador adlitem, de mis hijos menores a Dn. Eugenio Sierra, practicante Mayor del real Hospital de esta Plaza, lo que asi declara por ser mi voluntad. .....

Item: Nombro por mi albacea, y tenedora de bienes, a mi querido consorte, Maria Moreno, relevandola de todo fianza para que por si misma, y sin intervension, de la justicia proceda a dar cumplimiento en todas sus partes a esta mi ultiva voluntad. .....

Item: Declaro, Instituyo y nombro por mis unicos, y universales heredoros a los referidos, mis hijos, de todos los bienes que me correspondan satis fechas mis sudas, y los Seis cientos pesos, de la dote de mi referida consorte, para que con sa bendicion de de y la mia los hayan y hereden por iguales partes por ses asi voluntad. ....

Item: Declaro, que de los seis cientos p-s, de que soy responsoble ha recebido esta tres cientos y cinquenta pesos, pesos en un negro nombrado Franci-s, o Fran-es, para que conste.

I revoco y anula, doy por nulos y chanes bales y qualesqueiro otros testamentos codierlos que antes de este haya hecho pos escrito to, o de palabra los que quiezo no valgan mi hagan fe en juicio, ni fuera de el, solo este que al presente otorgo en aquella via y forena que meos haya lugar en derecho en cuya testimonio es criba esta carta de testamento en la Plaza de Panzacola a veinte y siete de Febrero de mil echo cientos

siete, siendo testigos Dn, Matias Cervera suo eniente del Regimento de la Lusiana, Dn. Jose Garcia, Capetillo, Dn.
120 Bernarda Molina y firmando a mi riugo, Dn. Jose Maria de la Pena.

ARUIGO de GABRIEL de RIVAS
por no saber firmar.
JPH. M. a, de la PENA.

MATHIAS CERVERA,
BERNARDO MOLINO,
JOSE GARCIA CAPATILLO.

En la Plaza, de Panz, a, a treinta de Abril de mil ocho cientos ocho anos, a consequencia delo mandad en decreto de esta, fecha, El S-r, Dn, Carlos Hernandez y Barrutia, Auditor de Guerra de esta Provincia, envirtud, de la Comicion que la esta conferida, en el auo del la prosedio a romper el pligo dela cubierta, que, se decsa contoner el testam—to, otos yado, por el Difunto Gabriel de Ribos lo que verificado en presencia de los Testigos instrumentales, Se saco de el el pligo de papel a cuya continucion se pone esta diligencia, y seleyo su contenido, y en fee, de ser el mismo firmo dicho sonor Aud-r, Guerra con nosotros, los testigos de acistencia de que damos fee, entre reng-s,=nostros=vole.

FRAN-CO, GENZ de FONTE,
PABLO GRANPARAS,
RAMON SANTIAGO,
ANTONIO MONTERO,
DOMINGO SAUSA,
PEDRO LAMADRIS.

HERNANDES,
FILLIPO PRINTO,
JOSE M-a MESA.

Virtas estas (estas) diligencias, y haviondoso verificado solenemente, la apertura y publicar lo del Testam-to, bap cuya disposicion fallecio el paysaus y vecino de esta Plaza, Gabriel de Ribos. Se declara lexitimo en la major forma qe haya lugar por direcho, interponiendose la, autoridad y decreto, judicial, y en ru consequencia asientese protocol isus endose enel quaderno, correspondiente y hagarre saver el nomb-to, de Alba, all y curadora y tenedora de bienes, a Da, Maria Moreno, y a Dn Eugenio Anto, Sierra el de curador de sus menores hijos ....., dos pesos ql, le pagaran pr, la Albaxea, con los costas que se tasaren en la forma orda.

Folch. Hernandes.

Proveygolo El Sr., Dn Vnzte, Folch y Juan Cornnel de los Reales exercios Governador Politice, y Militar de esta Prov,
a, dela Florida accidental 1901 S. M. a que ev fierno, con
121 dietamen del Sr., Auditor de Guerra en Panz. a a doz de Mayo de mil ocho cientos ocho anos.....

DOMINGO SAUSA. PEDRO LAMADRIE.

En dicho dia nosotros, los testigos de acistencia pasamos ala casa da Da, Maria Moreno y le notificamos en su persona la anterios Prov, a de que damas fe.....

SAUSA. LAMADRIE.

Sequida mente lo verificamos on Dn, Eugenio Ant-o, Sierra enenri pervona d amos fee.....

SAUSA. LAMADRIZ.

Tazacion de costas de estas dilig-s, practicados para la apertura del testam-to, del defunto Gabriel de Ribos sigun ansel..

	Reales.
A El Sr, Goverern-or por el anos de foras y una firma entera yuna modia firma, dies y ocho rrs.....	18
A El Snr, Aud-tor de Guerra por Sus sistencias y alesoria del sobtos, ochenta y dos rrs.....	82
A los Tests, de aista, por sus copaciones escrito y demas diligs, secenta y siete rrls, por sus.....	67
Al tasudor pr esta ocupacion dies rrls.....	10
Suma	1.77

Hasen 22 ps. 1 rl.
Panz-a 2 de Mayo 1808.

DOMINGO SAUSA.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
OFFICE OF U. S. SURVEYOR GENERAL,
TALLAHASSEE, FLA.

I, R. L. Scarlett, U. S. surveyor general for the District of Florida, do hereby certify that the foregoing and attached pages numbered from one to twenty-one, both inclusive, comprise a true and correct tracing of a certain "quaderne" known as a protocol which is in the Archives of this office, and in my custody as surveyor general for the District of Florida.

Witness my hand and private seal (there being no official seal), this twenty-sixth day of August, A. D. 1901.

R. L. SCARLETT,
U. S. Surveyor General, District of Florida.

Defendants offer with the will a translation thereof, which document is set out in words and figures as follows:

122 *Exhibit* "9."

In the name of the Almighty God, who lives without beginning and reigns without end, Amen.

Know all men that [this] is the last will and testament of Gabriel de Rivas, living in this city, born in the City of Seville, legitimate son of Antonio and Flora del Caro, natives of the same city.

I do not know whether they live or not, as it has been many years since I have had news of them. Being sick in bed, but with all my senses about me, memory and natural understanding, which the Lord God our Father has given me, believing firmly with all faith in the high and mighty majesty of the Holy Trinity, Father, Son and Holy Ghost, three persons really distinct and one in unity, and of the divine incarnation being made man for our salvation, in which faith I have been named and live, and propose to do so until I die, having before me the fear of death which is natural to everybody, and not knowing when my hour will come, I wish to make my will and for the better carrying out of it, I invoke to my aid the Royal Queen of the Angels, Holy Mary, Mother of God, and Our Lady, and I entreat her to interest herself in my behalf, with her precious Son, pardoning the gravity of my sins, and placing my soul in the way for salvation, with which prayer and divine invocation I will the following:

First: I commend my soul to the same God that made it, and redeemed it at the price of His most precious blood and passion. My body I consign to the earth from which it was made, and that they give it burial in the sacred ground of the faithful in the way and form that it may be ordered by my administrator, to whom I leave authority to make all arrangements for my funeral, this being my will.

Second: I desire that [they] say three masses for the repose of my soul, and that they give as alms two rials for each one, same to be taken out of my property, this being my will. I also declare that I am married according to the rites of our Mother Church, the Catholic and the Apostolic Church of Rome, from which marriage I have had seven children, namely: Antonio, Maria, Josefa, Paula, Juana, Gabriel, Aguida and Learnado de Rivas. "Para que conste." Also I declare that my property consists of the following: The house in which I live with my family, the house next to it, occupied at present by Pablo Granpna, and three hundred aprents of land outside of

the city limits. I also declare that there is due to me various sums of money, some of it due from the king, or his Royal
123 Treasury, and the balance from other individuals, and I desire that my administratrix will collect the same, using every effort in her power to do so. I also declare that I owe various parties sums of money, which will be found in my receipts and obligations, and I desire my administratrix to pay the same as soon as she collects what is due me, as she has a perfect knowledge of those to whom I owe, as she signed the documents for me. Also I name as guardian to my minor children, Eugenio Sierra, surgeon in chief to the Royal Hospital of this city, which I declare to be my wish. Also I name as my administratrix and manager of my estate, my beloved wife, Maria Moreno, relieving her from giving bond or security, and without intervention of the Courts, she will proceed to comply in all its parts to this my last will and testament.

I likewise declare that my only heirs are the children heretofore referred to, to whom will belong all of my estate, after my debts are paid, and $700.00, the dot of my aforesaid wife, who, with the benediction of God and my own, she is to receive and inherit this amount. This is also my will.

I likewise declare that of the $700.00 for which I am responsible, she has received $350.00 in a negro man named Francisco; "para que conste." I invoke and annul and hold for void, any other will or codisil [codicil] which I may have made, either by word or writing, that they shall have no effect in any Court, that the present is my last will.

In testimony of which this will is made in the City of Pensacola on the 27th day of February, 1807, being witness to the same.

Don Mattias Cevera, sublieutenant of the regiment of Louisiana, Don Jose Garcia Capetillo, Don Fernado Molino, and signing as my friend Done Jose Maria de la Pena, friend of Gabriel de Ribas, as he could not write.

(Signed) JOSE MARIA DE LA PENA.
(Signed) MATTIAS CEVERA,
(Signed) BERNADO MOLENO,
(Signed) JOSE GARCIA CAPETILLO.

Defendants offer translation of probate of will of Gabriel de Rivas, which is in words and figures as follows:

124 *"Exhibit 10."* G. No. 1.

PENSACOLA, 1808.

Last Will and Testament of Gabriel de Rivas.

His Excellency the Governor. Witnesses:

PEDRO LAMADRIZ
And DOMINGO SAUSA.

Maria de Rivas.

In the City of Pensacola, in the month of April, 1808, I, Vincente Focih Y, Jann, Colonel of the Royal Army, civil and military Governor of the Province of West Florida, and inspector general of the troops veteran and militia, Judge subdelegate of the supreme audience, and general postmaster. Before me personally appeared Da. Maria Moreno, who informed me that her husband had died, and had made a will, bringing with her two witnesses, to deliver to me in proper form said will, and requesting that I would take the necessary steps in regard to same, to whom I replied that on account of my many duties, it would be impossible for me to attend to it personally; that I would name publicly Dn. Pedro Lamadriz and Dn. Domingo Sausa, who accepted the nomination, swearing fidelity, and signed same, which I hereby certify.

(Signed) VINCENTE FOLCH,
(Signed) PEDRO LAMADRIZ,
(Signed) DOMINGO SAUSA.

In the aforesaid City of Pensacola on the 30th of April, in the year 1808, by virtue of the commission which had been conferred upon them, being in the office of Don Carlos Hernandez Y Barrutia, appeared before him Don Francisco Gongales de Torite, and before us the said witnesses and took oath in due form of law.

We placed before him the signed and sealed document, and asked him if the signature on the cover was his, and says Don Francisco Gonzales de Torite, that it is the same which he is accustomed to make; was asked his reason for making it replied, that the same was his own handwriting, that he was requested to come to his house by the deceased and having gone there he was shown by him this document, which explained was his last will and testament, and he signed on the cover as a witness, and

he has nothing further to say except that he is of age,
125 being twenty-five years old, signing the same together with this notary and ourselves.

(Signed) FRANCISCO GONZALES DE TORITE,
(Signed) HERNANDEZ,
(Signed) PEDRO DE LAMADRIZ,
(Signed) DOMINGO SAUSA.

Immediately after personally appeared before his Excellency, auditor of war, Don Antonio Montero, resident of this city, who made oath before said auditor, in due form of law, and having shown him a document signed and sealed with seven signatures and seals of war, on the cover of the same, one of which signatures was his, he was asked if he had signed the same, and if the deceased had informed him that it was his last will and testament, replied that it was his own true signature, and that he had signed the cover at the expressed wish of the deceased, which is all he can say.

This declaration was read to him, and he said it was correct, that he was fully of age and signed it together with his Excellency the auditor and ourselves, the commissioners aforesaid, to which we certify.

(Signed) ANTONIO MONTERO,
(Signed) HERNANDEZ,
(Signed) DOMINGO SAUSA,
(Signed) PEDRO DE LAMADRIZ.

Immediately afterwards appeared before his Excellency, the auditor and ourselves.

Ramon Santiago, who made oath in due form of law and having shown him the document signed and sealed and was asked if the signature appeared on the same, replied that it was his own true signature and that he had signed it at the request of the deceased, who informed him that it was his last will and testament, which is all that he has to say on the matter.

This certificate was made to him, and he signed it with said auditor and ourselves. He said that he was thirty-five years of age, to all of which we testify.

(Signed) RAMON SANTIAGO.
(Signed) DOMINGO SAUSA.
(Signed) HERNANDEZ,
(Signed) PEDRO LAMADRIZ.

On the same day, month and year, before the said auditor and ourselves, the said commissioners, personally appeared

126 Jose Maria Mesa, who made oath in due form of law, and was shown a document signed and sealed, upon the cover of which was found his name. He was asked if he signed it; he replied that it was his own and genuine signature, and he signed it at the request of the deceased Rivas, who told him that it was his ladt [last] will and testament and that he has nothing further to say. This certificate was read to him and siged [signed] by him, together with said auditor and ourselves, the said commissioners, to which we certify; he was also fully of age.

(Signed) JOSE MARIA MESA,
(Signed) DOMINGO SAUSA.
(Signed) HERNANDEZ,
(Signed) PEDRO LAMADRIZ.

Declaration of Don Filipe Prieto, second custom house officer, who being duly sworn according to law, and having shown him the document signed and sealed which was handed to us by Da. Maria Moreno, and on the cover of which was his name. He declared that it was his own true signature, having signed it at the request of the deceased, who told him that it was his last will and testament, which is all that he has to say in regard to the same. This certificate was read to him and he signed it together with said auditor and ourselves, the aforesaid commissioners. He said he was 29 years of age, to all of which we testify.

(Signed) FELIPE PREITO,
(Signed) HERNANDEZ,
(Signed) PEDRO DE LAMADRIZ.
(Signed) DOMINGO SAUSA,

Immediately after appeared before us and the said auditor of war Don Pablo Granpna, one of the witnesses whose name was found on the cover of the will of the deceased Rivas, and having been sworn in the due form of law he was shown the document signed and sealed, said that the signature of Don Granpna was his own true signature, that he signed the same at the request of the deceased, who told him that it was his last will and testament, which is all he has to say in regard to the matter. This certificate was read to him and he signed the same together with said auditor and ourselves, saying that he was 44 years of age, to all of which we testify.

(Signed) PABLO GRANPNA,
(Signed) HERNANDEZ,
(Signed) DOMINGO SAUSA,
(Signed) PEDRO DE LAMADRIZ.

127 At the same time appeared before the said commissioners Don Manuel de Lara, who being duly sworn in due form of law before us, the said commissioners, and having been shown a document closed and sealed, upon the cover of which was found his signature, he was asked if it was his signature, and if he was present at the making of the will by the deceased, replied that the deceased had called for him that he might be one of the witnesses to sign on the cover, and informed him that this was his last will and testament, and upon this occasion it appeared to him that he was in entire possession of his senses, both physical and mental, which is all he has to say on the subject, and that what he has said is the truth in regard to said will.

This document was read to him and signed with said auditor and for ourselves, the commissioners aforesaid, to which we testify.

(Signed) MANUEL DE LARA,
(Signed) HERNANDEZ,
(Signed) DOMINGO SAUSA,
(Signed) PEDRO DE LAMADRIZ.

In view of the foregoing declarations, resulting in the indentity of the document said to contain the will of Don Gabriel de Rivas, it will be in order to open and read the will in the presence of the witnesses.

(Signed) HERNANDEZ,
(Signed) FOLCH.

Approved by his Excellency, Don Vincente Folch, Y Juan, Colonel of the Royal Army, Civil and Military, Governor of West Florida for his Majesty, that the same be done in the presence of the auditor of war of this province, the 30th of April, 1808.

(Signed) PEDRO DE LAMADRIZ.
(Signed) DOMINGO SAUSA.

We, the undersigned, affirm that having been called by Gabriel de Rivas, whom we all know perfectly, who was sick in bed, but as it seemed to us to be in possession of his full senses, who showed us a document sealed with seven seals of war on the cover, informing us that it was his last will and testament, that he desire [desired] the same to be opened and published after his death, that it contained all that was required, i. e., his profession of the faith, the naming of heirs and administrators, and requested us to be witnesses to his last declaration,

and to make it effectual we signed the same in the City
128 of Pensacola the 27th day of Feb'y, 1807.

(Signed) MANUEL DE LARA,
(Signed) FRANCISCO GONZALES DE TORITE.

(Witness) (Signed) ANTONIO MONTERO,
(Signed) JOSE MARIA MESA,
(Signed) RAMON SANTIAGO,
(Signed) PABLO GRANPNA,
(Signed) FELIPE PREITO.

In the name of Almighty God, who lives without beginning, and reigns without end, Amen.

Know all men that this is the last will and testament of Gabriel de Rivas, living in this city, born in the City of Seville, legitimate son of Antonio and Flora del Caro, natives of the same city. I do not know whether they live or not, as it has been many years since I have had news of them, being sick in bed but with all my senses about me, memory, and natural understanding, which the Lord God our Father has given me, believing firmly with all faith in the high and mighty majesty of the Holy Trinity, Father, Son and Holy Ghost, three persons really distinct and one in unity, and of the divine Incarnation being made man for our salvation, in which faith I have been named and live and propose to do so until I die, having before me the fear of death which is natu*lar* to everybody, and not knwoing [knowing] when my hour will come, I wish to make my will and for the better carrying out of it, I invoke to my aid the Royal Queen of the Angels, Holy Mary, Mother of God, and Our Lady, and I intreat her to interest herself in my behalf with her precious Son, pardoning the gravity of my sins, and placing my soul in the way for salvation, with which prayer and divine invocation, I will the following:

First, I commend my soul to the same God that made it, and redeemed it at the price of his most precious blood and passion. My body I consign to the earth from which it was made, and that they give it burial in the sacred ground of the faithful in the way and form that it may be ordered by my administrator, to whom I leave authority to make all arrangements for my funeral, this being my will.

Second. I desire that they say three masses for the repose of my soul, and that they give as alms two rials for each one, same to be taken out of my property, this being my will. I also declare that I am married according to the rites of our
129 Mother Church, the Catholic and Apostolic Church of Rome, from which marriage I have had seven children,

namely, Antonio, Maria, Josefa, Paula, Juana, Gabriel, Aguida and Leonardo de Rivas. "Para Que Conste." Also I declare that my property consists of the following: The house in which I live with my family, the house next to it, occupied at present by Pablo Granpna, and three hundred aprents of land outside of the city limits. I also declare that there is due to me various sums of money, some of it due from the Ring, or His Royal Treasury, and the balance from other individuals, and I desire that my administratrix will collect the same, using every effort in her power to do so. I also declare that I owe various parties sums of money, which will be found in my receipts and obligations, and I desire my administratrix to pay the same as soon as she collects what is due to me, as she has a perfect knowledge of those to whom I owe, as she signed the documents for me. Also I name as guardian to my minor children, **Eugenio Sierra,** surgeon in cheif [chief] to the Royal Hospital of this city, which I declare to be my wish; also I name as my administratrix and manager of my estate my beloved wife, Maria Moreno, relieving her from giving bond or decurity [security], and without intervention of the Courts, she will proceed to comply in all its parts to this my last will and testament. I likewise declare that my only heirs are the children heretofore referred to, to wjom [whom] will belong all of my estate after my debts are paid, and $700.00, the dot of my aforesaid wife, who, with the benediction of God and my own she is to receive and inherit this amount. This is also my will. I likewise declare that of the $700.00 for which I am responsible, she has received $350.00 in a negro man named Francisco "Para Que Conste." I invoke and annul, and hold for void, any other wills or codicils, which I may have made either by word or writing, that they shall have no effect in any Court, that the present is my last will.

In testimony of which this will is made in the City of Pensacola, on the 27th day of Feb'y, 1807, being witness to the same. Don Mattias Cevera, Sub-Lieutenant of the Regiment of Louisiana, Don Jose Garcia Capetillo, Don Bernado Molino, and singning as my friend Don Jose Maria de la Pena, friend of Gabriel de Rivas. As he could not write.

(Signed) JOSE MARIA DE LA PENA,
(Signed) MATTIAS CEVERA,
(Signed) BERNADO MOLINO,
(Signed) JOSE CARCIA CAPETILLO.

130 In the City of Pensacola, the 30th day of April, of the year 1808, in consequence of a decree issued on this date, by his excellency, Don Carlos Hernandez y Barrutia, auditor of war, of this province, in virtue of the commission that was con-

ferred upon him by the act of the supreme authority, he proceeded to break the cover of the document that was said to contain the last will and testament of the deceased, Gabriel de Rivas, which he proceeded to do in the presence of witnesses to the same. He took from the cover the said document and proceeded to read it, believing it to be the will, the said auditor of war, and the undersigned commissioners signed it, to which we certify.

(Signed) FRANCISCO GONZALES DE TORITE,
(Signed) HERNANDEZ,
(Signed) PABLO GRANPNA,
(Signed) FELIPE PREITO,
(Signed) ANTONIO MONTERO,
(Signed) JOSE MARIA DE MESA,
(Signed) RAMON DE SANTIAGO,
(Signed) DOMINGO SAUSA,
(Signed) PEDRO LAMADRIZ.

Having done this, and in the most solemn manner opened and read the will aforesaid of Don Gabriel de Rivas, deceased, formerly a resident of this city, it is hereby declared under any and every circumstance which may arise, that the same is legal, and according to decree and judicial procedure, the same is to be copied into the "Quaderno," in the volume to which it corresponds, and be it made known the appointment of Da Maria Moreno as administratrix, and of Don Eugenio Ant'o Sierra that of the guardian of the minor children. The fees of this registration will be $2.00, which must be paid by the administratrix, together with the costs of same ordained by law.

(Signed) HERNANDEZ,
(Signed) FOLCH.

Approved by his Excellency Don Vincente Folch y Juan, Colonel of the Royal Armies, Governor, Civil and Military, of this Province of West Florida, for his Majesty, that he signs the same on the approval of his Excellency, the Auditor of War, in Pensacola, on this the 2nd day of May, 1808.

(Signed) DOMINGO SAUSA,
(Signed) PEDRO LAMADRIZ.

On the same day, we the said commission, repaired to
131 the house of Da Maria Moreno, and we notified her personally to the foregoing, to which we testify.

(Signed) LAURA,
(Signed) LAMADRIZ.

Immediately after we advised Don Eugenio Ant'o Sierra personally, to which we testify.

(Signed) LAURA,
(Signed) LAMADRIZ.

Account of costs and other expenses occasioned by the opening of the will of the deceased, Gabriel de Rivas, as follows:

	Rials.
To his Excellency the Governor, for one and a half signatures, eighteen rials	18
To his Excellency the Auditor of War, for his attention and fees, eighty-two rials	82
To the witnesses, for services, attendance and all other services, sixty-seven rials	67
To the appraiser, for his services, ten rials	10
Sum	1.77

Equal to 22 Pts. 1 R-L, Pensacola, 2nd of May, 1808.

(Signed) DOMINGO SAUSA.

[Blank sheet.]

Defendants offer certified copy of proceedings to sell house, by Maria Morino, certificate being made by Mr. Scarlett, surveyor general already mentioned, which document is set out in words and figures, as follows:

"*Exhibit* 11."

Anto de 1809 dilg-1817. B.

120. En la Plaza de Panzacola asocinoe dios Mavo demil ocho cientos neuve anos Dn Vicente Folch y Juan coronel, de los reales exercites Governador Politico y militar de esta Provincia dela Florida Occidental Inspector delas tropas vetera nas y milicios de ella vice patrons vea o jues subdelegado dela superintendencia general de correos pr S. M. & a, digo que haviendo muerlo hase un ano pasado Fran-co. Ribas de este vecindaris dejando hijo menores, y vienes sin que en tode este tiempo su Albacea y curador de dichos menores hayan presentado los Inbentarios ny cuenta de particion, y siendo responsable
132 el Tribunal a semejante omicion, por lanto mande a los, testig-s de acistencia nombrados Dom-o, Sausa, y Ancestaciomntes de oca, que estan en cargados del archive, publico, y (lamas forames) que a continuacion, de este auto pon-

gan testimonio del testam-to vajo cuya disposicion fallecio el citado Gabriel de Ribas, y colocando asu seguido lopea autorisada de la partida desu entierro, a cuyo efecto ocurrirau al S,r Cura y vicario, puesto lo participacion de escrito; y hagasio saber a la Albacea y Curador, presenten dentro de quatro dias el imbentaria del caual con la cuenta y relacion furodo de Gastos y deu das, avidas y parohuber en vista de todo proveer, lo que sea correspondiente, y por esto (que provecis) asi lo mando y firiuo, con dictamen del Senor Dn Carlos Hernandes Auditor de Guerra y Alecon del Govierno de esta Provincia.

FOLCH HERNANDES
DOM-O, SAUSA ANAST-MONT DE OCA.

Nosotros los abajo firma dos decimos que haviendo sido llamados por Gabriel de Rivas a quien perfectamente conocinos lo encontramos enfermo en oama pera al parecer en su entero juicio memoria y entendemiente natural, elqual nos enseno este pliego, cerrado con siete senales de Lacre en la cubierta diciendonos que era su testamento y ultima postrimera voluntad que queria se, abriese y publicase despues de su fallecimiente y que si, cumpliese y excutase quanto en el atenia dispruebo que tenio hecha la protestestacion de la fee, dispueste su entierro y nombrado herederos y Albacea y nos rogo qe fuesemos tetigos de esta su declaracion, y para qe, Conste lo firmamos en esta Plaza de Panzacola veinte y siete de Febrero de mil ocho cientos siete.

Fran-co, Ganzales Fonte,—Jose Maria Mesa,—Manuel D Lara, como testigo Antonio Montero—Pablo Granpera,—Ramon Santiago—Felipe Priete.

Testamte, En el nombre de Dios todo Poderoso que vive sin principeo, y reyna sin fin Amen,—sepan quanto esta carta de Testamento ultima y postrimera voluntad vieren como qo Gabriel de Rivas vecino de esta Plaza, natural dela ciudad de sevilla hijo legitima de Antonio y de Flora del Caro naturales y vecino del a mismo ciudad los quales ignora si viven pr haver muchos anos que no he tenido noticia de ellos hallandome enferno en cama en mis entero juicio, memoria y entendim-te, natural tal que dios nuestro Senor ha sido servido darme crequendo como firmemente creo en el alto y soberano Misterio de la Santisima, trinidad padre, hiso y Espiritu Santo tres personas realmente distintas y una esencia verdadera, y en el dela encarnacion del vervo Divimo hecho hombre, para nuestro remedio; en ano fe, y creencia he vivedo y protexto
133 hacerle hasta morir teniende la muerte qe es natural a toda criatura hi hora insierta previendo qe ha de llegal la mio quiero hacer mi testamento y para su mayor direcion

invoco pr mi abo gada a la soberna reyna dolos Angeles Maria Santisima, Madre de Dios y Senora nuestra y le suplico que en terceda pr mi con su precioso hijo perdone la gravedad de mis culpas, y ponga mi Al ma en carrera de Salvacion, con cuja suplica protesta y divina invocacion lo ordeno en la forma seguiente.—Primeramente, en comiendo mi Alma al mismo Dios y Senor ql la crio y redimio con el precio y valor infinite de su preciosa sangre, Pasion y muerte, el cuerpo mando ala tierra de que fue formado y que se me de sepultura en el campo santo de los fieles en el modo y forma que dispuciere mi Albacea a cayo dispocicion dexo lo demas de mi entierro pr ser asi mi voluntad.

Item; mando se me digan las tres misas del Alma pr el des canza de la mia y que se dende limosna por una vez a cada, una de las mandas forzozas con que los separo de mis bienes por ser asi mi voluntad.

Item; declaro ser casado segun orden de nuestra santa Madre Yglesia Catolica Apostolica de Roma de cujo Matrimonio con Maria Moreno, he tenido siete hijos, nombrados, Antonio, Maria, Josefa, Paula, Juana, Gabriel, Agueda, y Leonardo de Rivas, pa que conste.

Item: Declaro tener por mis bienes la casa en que estay alexado con mi familia, la contiga ocuporda actualmente pr Pablo Granpera y tres cientos, Arpanes de tierra situados extramuros de esta ciudad.

Item: Declaro que se me deben varios cantidades de dinero, tanto por el Rey o su Real Hacienda; como por distintos particulares, las que encargo a mi Albacea las cobre, haciendo quantas diligencias sean peresarias al efecto.

Item; Declaro que de bo a varios personas distintis, cantida des que constan de mis obligaciones o recibos, y ruego a mi Albecea las pague luego, que cobre lo que se me debe, como qe tiene perfecto conocimiento de las que son por haverlas firmado por mi.

Item; Nombre por curador adlitem de mis hijos menores a Dn. Eujenio Sierra practicante Mayor del Real hospital de esta Plaza lo que asi declaro, por ser mi voluntad.

Item: Nombro por mi Albacea y tenedora, de bienes, a mi queri do consorte Maria Moreno, relevandola de toda fianza pa que por si mismay sin intervencion de la justicia proceda a dar cumplimiente en todas sus partes a esta mi ultima voluntad.

Item; Declaro, Instituyo y nombro por mis unicos, y
134 universales heredores a los referidos mis hijos de todos los cientos pesos de la Dote de mi referida consorte, para que con la benedicion, de Dios y la mia las hayom y hereden por iguales partes, por ser asi mi voluntad.

Item; Declaro que de las seis cientos pesos de que soy responsable por la Dote de mi Esposa ha recevido esta tres cientos y cinquenta pesos en un negro nombrado Franc o Frances, pa que conste.

I revoco y anulo doy por nulos y chancelados quales quiera otros testamentos o codicilies que antes del esta haya hecho, por escrito o de palabra los que quiero no valgan mi hayan fee, en juscio nifuera de el salvo este que al presente otorgo en aguella via y forma, que mas haya lugar en derecho, en cuyo testimonia es plico esta carta de testamento en la Plaza de Panzacolan a veinte y siete de Febrero de mil ocho cientos siete, siendo Testigos, Dn Matias Cervera subteniente del Regimen-te de la Luis-a, Dn Jose Garcia Capetillo, Dn Bernardo Molina, y firmado a mi ruego Dn Jose Maria dela Pena. Arruego de Gabriel de Rivas por no saber firmar,—Jose Maria dela Pena, matias Cervera,—Bernardo Molina,—Jose Garcia Capetillo.

En la Plaza de Panzacola a tienta de Abril de mil ocho cientos ocho anos a consecuencia de lo mandado en decreto, de esta fha, el Senor Dn Carlos Hernandes y Barrutia Auditor de Guerra de esta Prov-a, en virtud dela comicion ql le esta conferida en el anto de———na procedio a romper el pliego dela eubierta que se decia, contener el testamento otorgado, por el Difunto Gabriel de Rivas, lo que verifica do en presencia de los testigos, instrumentales, se saco de el el pliego de papel a cuia continuacion de pone esta, diligencia, y se leyo su contenido, y en fee de ser el mismo firmo dicho Senor, Auditor de Guerra con nosotros, los testigos de asistencia de que damos fee; Hernandes, Franco, Gonzales, de Fonte. Manuel de Lara. —Felipe Prieto.—Pablo Granpera.—Antonio Noatero.—Jose Ma, Mesa. Ramon Santiago. Domingo Sausa. Pedro Lamadriz.

Decreto; Virtas estas diligencias y haviendose verificada Solemne mente la apertura y publicacion del testamento baxo cuver dis posicion fallecio el pai sano y vecino de este Plaza Gabriel de Rivas se declara legitimo en la mejor forma que haya lugar por derecho, interponiendose la autoridad y decreto judicial, y en su conseenoncia, archivese protocolis candose en el que derno correspondeinte y hagase saber el nombramiente Albasea y tenedora de bienes a Da, Maria Moreno, y Dn Eugenia Ant-o, de Sierra el de curador de sus menores hijos, A
135 ses-a, dos pesos que se pagaran pr la Albasea con las cortes que se tasaran en la forma ordinaria

FOLCH HERNANDEZ,

Proviim-to; Proveyolo el Senor Dn, Vicente Folch y Juan coronel de los Reales exercitos Gobernador Politico y Militar

de esta Prov-a, de la Floridas, Occidental pr S. M. Sr-a, que lo firmo con di ctamen del Sor. Auditor de Guerra en Panzacola a dos de Mayode mil ocho cientos ocho anos, Domingo Sausa Pedro Damardriz.

En dicho dia nosotros los testigos de asistencia pasamos ala casa de Da, Maria Moren y le notificamos en su persona lo atcarior providencia, de que damos fee;—Sausa. Lamadri.

(Otra); Segundamente lo verificamos en Dn, Eugenia Ant-o, Sierra en su persona damos fee: Sousa.———Lamadri.

A conforme al original que exciste en el archibo de este Govierna a que me remito y en virtud delo mandad se ha sacado a *continuacion del acto ante ries selente* en Panz-a, a once de Junio de mil ocho cientos nueve anos.

Viz-te, FOLCH.

DOMINGO LAURA. ANAN-E, MON-CL de oca.

Sor. Gor-or.

Maria Moreno Vinda Rivas, ante VS, con la atencion que dev e se presenta y dice; que, el estado de escaces o mas bien miseria en que de halla, por les muchas enfermedades, y gastos que ha tenido que hacer de su viadas, la obligan para poder mentenene, aprovechar, de la rara proposicion que sele hace de comprar lesu casa, pero como haviendo pasado al oficio publico a efecto, depasor al comprador la correspond-te, venta, y que sele haya, manifestado, no poder verificerse por hallane la casa entredichada, Recurro ala justificacion de V. S.

Suplicando se sirva mandar no se le pongam impedimente en ello, tanto por no perder la ocasion tan faborable que tiene de salir de, ella con ventaja, como por el estado de ruinos a en que se halla dicha casa, y que es el unico medio qe le queda pa poder manteresse con su familia; es gracia que recibira de la justicia de V. S.

Panzacola, Ag-to, 11 de 1817.

MA MORENO.

Panz-a, Tha VI Supra.

Informe D Eugenia Sierra Sobre esta solicitud.

Masot

Sor. Governador.

En complimento del decreto que antesede devo informas, a V. S. lo siguente que por muerto del difunto Graviel Rivas esposo de la qe, suplicar quedo por todo, vien dos casas de
136 las quales vendio la vinda mia de ellos con permiso (si bien me acueardo del Tribunal) sin haver me deado los abalnos de ellas, nimenos haverse echo la divisora del caudal pa

poner a cubierto la parte de seis menoris de qe aun se hallan en descubierto, y qe sin embargo ql como Albacea testamentorio solicite con la vinda berificar esta precisa deligencia siempre ubo alguna dificultades qe lo impidieron por su parte; pero habiendose presentade comprador pa la casa qe se haya sumamente deteriorada, y ser el precio mas qe lo regular por las circumstancias del dia, y dichos fabrica espuesta un insendio me parese favorable se le permita la venta de ella con la mayor brevedad a fin de qe no se arepienta el comprador, y pal lo ql coresponde a poner hacubierto la partede los menores y segun los tramete de derecho las savias providencias de V. S. determinaran quanto sea de su agrado Panzacola 11 de Agosta de 1817.

EUGENIO ANT-O, SIERRA.

Panzacola Ag-to, 11 de 1817.

Pase al Sor. Auditor Grra, y Aeaor Gral.
Masot.

Panzacola y Agosto 12 de 1817.

(vertos:) siendo constante quanto expresa el curador al isten de los menores de Gabriel Rivas en un informe conispt-te, y envintud deser notorio y visible el estado de ruinas en qe se halla la casa; pedmitere la venta qe es licta me qe convengon los herederos firmando todos la escrituria pr si cpor los respectivos padres y tutones de los nietos, y guedando retendio el precis en secretaria trarta qe se con clya el juicio de inventario anos y cuenta divisaria Arcuenia pr.

MASOT HERNANDES.
DOMINGO SAUSA JOSE CEVALLOS.

En el mismo dia lo hicimos, saver a Da Maria Moreno, Damos fe

SAUSA CEVALLOS.

Seguidam-te lo verificamos en Dn Eugenia Ant-o, Sirra Damos fe.

SAUSA CEVALLOS.

En el mismo acto lo hecemos saver a D Ramon Vilalto, Dn Jose Caro, y a Dn Fern-do Moreno, como Padres y maridos en las heredera: damos fe.

SAUZA CAVALLOS.

Panzacola y Agto. 12 de 1817.

Sin embargo de no hallarse todavia el dinero en deposito; pase este pedimento al Sor. Auditor de Grra, pa, que dicto la providamia que coresponda.

MASOT.

Sor. Gob-n.

Puedan danse los dos cientos Ps. S Rev qe convengan a los heredoros mayores y el curador adlitem el menor, aquien-
137 eresse les hara saber pa qe pr respuesta firmada expliquen he conventi miento; no habiendo tampoco enparan en ql guede retenido el dinero enpreden de D Toret Fajisla, previo Iho consistin-t

Panzacola y Agto 13 de 1817.

CARLOS HERNANDES.

Panz-a, fha est supra.

Como parece al Sr. Auditor de Grra. y tasense las costos

MASOT

DOMINGO SAUSA JOSE CEVALLOS.

Sor. Gobernador y sub-do de Rl. haciendo.

En virtud del dictamen era sha II del corriente que sea servido el sor. Auditor de Guerra decretar, sobre el permitirme la venta de la casa de mi pertinencia depositando el imperte, asta acclara la testamenteria de mi difunto esposa Dn. Gabriel de Rivas y hallando lo por muy, conbeniente.

A. D. S. Suplico, enearesidamente se Sirra mandar si lo hallo por conbeniente que de los mil y doseientos pesos que se medan contantas, se me entreguen dos cientos pesos, para que en este intermedio, pueda pagar elelguilerde la casa donde abito, como hasi mismo para alimentarme, y igualmente a mis hijos por hallarme, en la ultima necesidad, y comprar ropa, para bestirme y mis hijos y gualmentepor estar desmedos, pues es publico que hase mas de suis mesas que me estoy mantenias de coridad, y que el resto del dinero se deposite, en manos de Dn. Jose Tapeola, en el interpresente de las cuentos de la sucesion al tribunal, gracia qe, es pero mercer de la Boddad y beniguidad de V. S. Panz, la 12 de Agosta 1817.

MA MORENO.

En el msimo dia lo hecinos saver a Da Ma. Moreno damos fe.

SAUSA CAVALLOS.

En el mismo dia haviendo si do citados comparecieron en este oficio D Eugenio Sierra, D Ramon Villalta, D Fermando Moreno, y Dn Jose Caro, el Pain-o, curador y los otros Mari-

dos de las Herederas; y Grabriel de Rivas como Heredero por su parte a dicha susecion y haviendos ele enterado de la providencia, que precede todos unaniment dixeron que consentian en que se le entregue a la vinda los dos cientos pesos, y que el resto que de depositado como este prevenido, y mediante que en el mismo acto ha manifestado D Jose Tapiola que no, podia admitir dicho en cargo, fueron igual mente e comun acuerdo queden en secret-a. como estava mandad y lo firmaron eg-l damos fe. Por mi menores hijos por mi esposa Da Paula Rivas.

FERN-DO, MORENO JOSE ESTAVAN CARO

138 Como padre de mis men-s. hijos

GABRIEL RIVAS

RAMON VILLALTE.

En el mismo acto despuer de haver recibida del Cororedor D Edward Tounes los mil dos cientos pesos que le satisfecho de contado segun la escritura con esta fha se haoborpado en el segundo quaderno de instrumentos publicos del corriente ano de folio 45) se le contaran y memerraron los dos cientos pesos ql se le mandar entregar en Providencia de este dia con consentimiente de los herederos mayores ala viuda Da, Maria Moreno de los que sedio por entregados a su voluntad y en su virtud lo firmo con su Senoria de que damos fe: Nosotros los testigos de Anistencia de que damos fe;

MA, MORENO.

DOMINGO SAUSA JOSE CAVALLOS.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

OFFICE OF U. S. SURVEYOR GENERAL.

TALAHASSEE, FLA.

I, R. L. Scarlett U. S. Surveyor General for the District of Florida, do hereby certify that the foregoing and attached pages numbered from one (1) to twenty-nine (29) both inclusive, comprise a true and correct tracing of a certain "quaderno" known as a protocol, which is in the archives of this office, and in my custody as surveyor general for the District of Florida.

Witness my hand and private seal, (there being no official seal), this twenty-sixth day of August, A. D. 1901.

R. L. SCARLETT,

U. S. Surveyor General District of Florida.

Defendants offer translation which is set out in words and figures as follows:

Exhibit 11.

The act of 1809 "Dihgs" 1817. B.

120. Judicial formalities regarding the sale of house and lot number one of deceased Gabriel De Rivas.

In the City of Pensacola on the 29th of May, of the year 1809, Don Vincente Folch Y. Juan, Colonel of the Royal Army Civil and Military, Governor of the province of West Florida, Inspector of troops veteran and militia, Judge sub-delegate of the Supreme Audience, and General Postmaster for his
139 majesty, etc., was informed that Gabriel De Rivas a citizen of this place had died upwards of a year ago leaving minor children and property, that during all this time neither his administratrix nor the guardian of his minor children had presented their inventory or accounts to the court, and being responsible to the court for said failure, I hereby order that the Court administrators, to-wit: Domingo Sausa and Anastacio Montez De Oca who are in charge of the archieves, and in continuation of this act, they place in testimony the will of the deceased Gabriel De Rivas, also his certificate of burial, which they will procure from the Parish Priest. They will inform the administratrix and guardian that within fifteen days they must present the inventory of the estate, together with the sworn account of the debts and expenses, that the proper steps may be taken. I so order it and sign it with the approval of Don Carlos Hernandez, Auditor of War and of the Government of the Province.

(Signed) FOLCH,
" HERNANDEZ,
" DOMINGO SAUSA,
" ANTONIO MENTZ De OCA.

We the undersigned having been called by Gabriel De Rivas whom were personally and well acquainted with, found him sick in bed, but in the full possession of his natural senses, showed us this document closed with seven seals of war on the cover, informing us that it was his last will and testament, that he wished it opened and published after the death, and that all the causes in it complied with and executed according to the text, that he had made the confession of the faith, made disposition of his funeral, and named heirs and administratrix, and earnestly requested us to be the witnesses to his will, in

testimony of which we signed this in the City of Pensacola, the 27th day of Feb'y. 1807.

(Signed) FRANCISCO GONZALES DE TORITE,
" JOSE MARIE MESA,
" MANUEL DE LARA.

(As witnesses):

ANTONIO MONTERO,
PABLO GRANPERO,
RAMON SANTIAGO,
FELIPE PRIETO.

Will..... In the name of the Almighty God, who lives without beginning, and reigns without end, Amen.

140 Know all men that this is the last will and testament of Gabriel De Rivas, living in this city, born in the City of Seville, legitimate son of Antonio and Flora Del Caro, natives of the same city. I do not know whether they live or not as it has been many years since I have had news of them, being sick in bed but with all my senses about me, memory and natural understanding which the Lord God our Father has given me, believing firmly with all faith in the Holy and Mighty Majesty of the Holy Trinity, Father, Son and Holy Ghost, three persons really distinct, and one in unity, and of the Divine Incarnation, in which faith I have been reared and live, and propose to do so until I die, having before me the fear of death which is natural to every body and not knowing when my hour will come. I wish to make my will and for the better carrying out of it, I envoke to my aid the Royal Queen of the Angels, Holy Mary, Mother of God and Our Lady, and I entreat her to interest herself in my behalf with her precious son, pardoning the gravity of my sins, and placing my soul in the way of salvation, with which prayer and divine invocation, I will the following:

First. I commend my soul to the same God who made it, and who redeemed it at the price of his most precious blood and passion. My body I consign to the earth from which it was made, that they may give it burial in the sacred ground of the faithful, in the way and form that it may be ordered by my administrator, to whom I leave authority to make all arrangements for my funeral. This being my will.

Second. I desire that they say three masses for the repose of my soul, and that they give as alms two rials for each one, same to be taken out of my property, this being my will. I also declare that I am married according to the rites of our Mother Church, the Catholic and Apostolic Church of Rome, from

which marriage, I have had seven children, namely, Antonio, Maria, Josefa, Paula Juana, Gabriel, Agueda and Leonardo De Rivas, "Para Que Conste."

Also I declare that my property consists of the following the house in which I live with my family, the house next to it, occupied at present by Pablo Granpera, and three hundred arpents of land outside of the city limits. Also I declare that there is due to me various sums of money, some of it due from the Ring, or his Royal treasury, and the balance from other individuals, and I desire that my administratrix shall collect the same using every effort in her power to do so. I also declare
141 that I owe various parties certain sums of money, which will be found in my receipts and obligations, and I desire *my administratrix to* pay the same as soon as she collects what is due me, as she has a perfect knowledge of those I owe as she signed the documents for me. Also I name as guardian to my minor children Eugenio Sierra, Surgeon-in-chief of the Royal Hospital of this city, which I declare to be my wish. Also I name as my administratrix and manager of my estate, my beloved wife Maria Moreno, relieving her from giving bond or security and without intervention from the courts, she will proceed to comply in all its parts to this my last will and testament. I likewise declare that my only heirs are the children heretofore referred to, to whom will belong all of the estate, after my debts are paid, and $700 the dot of my aforesaid wife, who with the benediction of God and my own, she is to receive and inherit this amount. This is also my will. I likewise declare that of the $700.00 for which I am responsible for the dot of my wife aforesaid, she has received $350.00 in a negro man named Francisco "Para Que Conste" I revoke and annul and hold for void other wills or codicils, which I may have made either by words or writing, that they shall have no effect in any court, that the present is my last will in testimony of which this will is made in the City of Pensacola the 27th day of Feb'y, 1807, being witnesses to name, Don Mattias Cevera, sub-lieutenant of the regiment of Louisiana, Don Jose Garcia Capetillo, Don Bernado Molino, and signing as my friend Don Jose Maria De La Pena, friend of Gabriel De Rivas, as he could not write.

(Signed) JOSE MARIA DE LA PENA.
" MATTIAS CEVERA,
" BERNADO MOLINO,
" JOSE GARCIA CAPETILLO.

In the City of Pensacola, the 30th day of April, of the year 1808, in consequence of a decree issued on this date by his

excellency Don Carlos Y. Barrutia, Auditor of war of this province in virtue of the commission that was conferred upon him by the act of the Supreme Authority, he proceeded to break the cover of a document that was said to contain the last will and testament of the deceased Gabriel De Rivas, which he proceeded to do in the presence of the witnesses to the same. He took from the cover the said document and proceeded to read it believing it to be the will. The said auditor of
142 war and the undersigned commissioners signed it, to which we testify.

(Signed) FRANCO GONZALEZ DE TORITE,
" HERNANDEZ,
" PABLO GRANPERA,
" FELIPE PRIETO,
" ANTONIO MONTERO,
" JOSE MARIA DE LA MESA,
" RAMON SANTIAGO,
" DOMINGO SAUSA,
" PEDRO LAMADRIZ.

Having done this and having in the most solemn manner opened and read the will aforesaid of Don Gabriel De Rivas, deceased, formerly a resident of this city, it is hereby declared under any and every circumstance, which may arise, that the same is legal and according to decree and judicial procedure, the same is to be copied into the "quarderno" in the volume to which it corresponds, and be it made known the appointment of Da Maria Moreno as administratrix and Don Eugenio Ant'o Sierra that of the guardian of the minor children. The fees of this registration will be two dollars, which must be paid by the administratrix, together with the costs of same ordained by law.

(Signed) HERNANDEZ,
" FOLCH.

Approved by his excellecy Don Vincents Folch Y. Juan, Colonel of the Royal Armies, Governor Civil and Military of this province of West Florida for his majesty that he signs the same on the approval of his excellency the auditor of war, in Pensacola, this 2nd day of May, 1808.

(Signed) DOMINGO SAUSA.
" PEDRO LAMADRIZ.

On the same day we the said commission repaired to the house of Da Maria Moreno, and we notified her personally of the foregoing, to which we testified.

(Signed) SAUSA,
" LAMADRIZ.

Immediately after we advised Don Eugenio Ant'o Sierra personally to which we testify.

(Signed) SAUSA,
" LAMADRIZ.

We do hereby [certify] that the foregoing is a true and faithful copy of the original on file in this government,
143 and in virtue of decree aforesaid. I have made a copy of the same in Pensacola, the 11th day of June, 1809.

(Signed) VINCENTE FOLCH,
" DOMINGO SAUSA,
" ANASTACIO MONTEZ DE OCA.

To his Excellency the Governor:

Maria Moreno widow of said Rivas before you with all attention that the case demands, says that the state of want, or better say misery, in which she finds herself on account of the many cases of sickness to which she finds herself subjected since her widowhood to support herself she has been obliged to advantage of a proposition to buy her house, and having applied to the proper authority to make the bill of sale, she has been informed that said sale could not take place because the house was in the hands of the law, she recurs to the justification of your excellency, and begs that you will please order that no difficulty will be placed in her way to make this sale, as she does not wish to lose such a favorable occasion to dispose of it so advantageously, and account of the delapidated state of said house and that this is the only way that remains to her, which will enable her to support her family. This favor she hopes for from the justice of your excellency.

Pensacola, August 11th, 1817.

(Signed) MARIA MORENO.

Pensacola date above. Don Eugenio Sierra, will report to me on the above petition.

(Signed) MASOT.

To the Governor:

In compliance with the foregoing decree, I beg to inform your excellency that on the death of Gabriel De Rivas, husband of the supplaint, there were left two houses of which the widow sold one with permission (if I recollect right, of the court) without mediation of its officers, nor having division of the proceeds and separating the part that belonged to the six minor children, and which yet has not been accounted for, nevertheless as administratrix of the will, I requested her to attend to this important matter, she always alleged some difficulty in the

way which prevented her from doing so, but a purchaser for the house having presented himself, which is a very bad state of repair, and the price that he offers is more than good under the circumstanmes at the present time it seems to me more than favorable that you will permit her to make the sale as soon as possible so that prospective buyer will not repent of his offer and that she be required to deposit the part of the pur-
144 chase money with the court for the minor heirs, according as the law requires.

Hoping this will meet with your approval, Pensacola, August 11th, 1817.

(Signed) EUGENIO ANT'O SIERRA.

Pensacola August 11th, 1817.

Pass this to his excellency, the auditor of war, and administrator general.

(Signed) MASOT.

Pensacola, August 12th, 1817.

Having taken note of the wishes of the guardian in reference to the interest of the minor heirs in his communication, in regard to the favorable state in which the house now is, the solicited permission for the sale is granted, as the best that can be done for all the heirs. The deed will be signed by him and whoever represents the parents and tutors of the grandchildren, the purchase price to remain in the secretar*ies* office until affairs are settled, and the proper division made.

(Signed) HERNANDEZ,
" MASOT,
" DOMINGO SAUSA,
" JOSE CEVALLOS.

On this same day we advised personally Da Maria Moreno, which we testify.

(Signed) SAUSA.
" CEVALLOS.

Immediately after we personally advised Don Eugenio Ant'o Sierra, which we testify.

(Signed) SAUSA.
" CEVALLOS.

At the same time we advised Don Ramon Villilta, Don Jose Caro, Y. Don Fernando Moreno, as fathers and husbands of the heirs, to which we testify.

(Signed) SAUSA.
" CEVALLOS.

Pensacola August 12th, 1817.

Notwithstanding that the money has been placed in deposit, pass this act to his excellency, the auditor of war, in order that he dictate the necessary instructions.

(Signed) MASOT.

To his Excellency the Governor:

You can issue decrees which your excellency thinks
145 convenient to the heirs which are of age, and the guardian of the minors, giving them to understand that in order to make it firm and effectual the acts should be signed by them, neither are they to have any objection to the funds remaining in the possession of Don Jose Tapiola, until said act is consummated.

Pensacola, August 13th, *13th*, 1817.

(Signed) CARLOS HERNANDEZ.

Pensacola, same date as above. As it appears to the auditor of war let this be done.

(Signed) MASOT,
" DOMINGO SAUSA,
" CEVALLOS.

His Excellency the Governor and sub-delegate of the Royal treasury:

In virtue of the decision made on the 11th inst. which his excellency the auditor of war has seen fit to decree, allowing me to sell one of my houses, depositing the purchase money until the final settlement of the will of my deceased husband, I find the same quite in order.

A. D. L. I would earnestly request of your excellency, in case you are disposed to do so, that of the $1200.00 that are on deposit they will allow me to have the sum of $200.00 that in the interim of settlement, I can pay the rent of the house in which I live and have wherewith to maintain myself and my children, as I find myself in dire necessity being in need of clothes to dress myself and my children, we are almost naked, and it is publicly known that for six months past, I have been sustained by charity, awaiting the settlement of the funds on deposit in the hands of Don Jose Tapiola and for him to make his accounts to the court for settlement of the same.

This favor I hope to merit from the kindness and benignity of your excellency.

Pensacola, August 12th, 1817.

(Signed) MARIA MORENO.

On the same day we notified personally Da Maria Moreno, which we testify.

(Signed) CEVALLOS,
" SAUSA.

On the same day having summoned to appear in this office the following Don Eugenio Sierra, Don Ramon Vallilta, Don Fernando Moreno, Don Jose Caro the provincial guar-
146 dian and other husbands and heirs and Gabriel De Rivas as heir in his own behalf, and having informed them of all the steps that had been taken in the premises, they all gave their consent to give to the widow the $200.00 that she asked for which was in deposit, according to law, as a part of the same law Don Jose Tapiola was informed that he could satisfy the demands, and that the rest of the funds should remain in the secretary's office and then the document was signed by all as follows:

For my minor children for my husband.

PAULA RIVAS,
(Signed) FERNANDO MORENO,
" JOSE ESTAVAN CARO.

As Father for my children.

(Signed) RAMON VILLILTA,
" GABRIEL DE RIVAS.

In the same act after having received from the lawyer Don Eduardo Torres the sum of $1200.00 which he paid in cash according to the terms of the deed, which has been recorded on this date, in the second volume of the book of public instruments, the second volume of the current year on page number 45, the sum of $200.00 was taken out and numbered, which was ordered to be paid with the consent of the heirs that are of age, to the widow Da Maria Moreno, which was done of their own free will and accord, and she signed for its receipt in our presence, to which we the aforesaid commissioners of the court do hereby testify.

(Signed) MARIA MORENO,
" DOMINGO SAUSA,
" JOSE CEVALLOS.

Defendants offer a translation which purports to be a petition by Maria Moreno, as executrix for the sale of this particular property in controversy in order to pay certain debts of the estate, and the proceedings upon that petition, the sale and the disbursion of the money, arising from that.

Which document is set out in words and figures as follows:

147 Offered by Defendants, "*Exhibit* 12."

Translation into English from the Spanish manuscript Archives of West Florida, in the matter of the sale of three hundred arpens of land belonging to the Estate of Gabriel de Rivas, Deceased.

To His Ex. the Governor:

Mr. Eugenio Anto Sierra, testamentary executor of Gabriel de Rivas, deceased, to your Excellency with due respect says:

That having seen the accounts presented by the widow Rivas, it appears to him that they are in conformity with the heavy expenses that it cannot be denied she has always incurred with her numerous family, some of whom on many occasion, almost always were sick.

That it has been necessary to make several repairs, chimneys, etc., to the house, in as much as when bought it was only an old store and although they have tried to repair it on many occasions they have never been able to alter its bad construction, that which it had in the beginning, notwithstanding the expenses they have incurred.

That at the death of the said Rivas, there was no other property than the two houses, for his prolonged sickness caused the exhaustion of all and whatever means they had been able to accumulate by the keeping of a poor store, so much so that if my memory serves me right the clothes to dress deceased were given by a charitable person, which reason it was thought was sufficient for overlooking and avoiding the costs of an inventory and appraisement of the two houses, the only property there was.

That of the payments made I notice to have been paid only the physician who attended deceased. I also notice that a copy of the will was not taken out and which ought to accompany the proceedings.

And as to what refers to the three hundred arpens of land they should be valued and sold to add the proceeds to the common fund and make partition to the minors and secure to every one what may correspond. It being at the wise authority of the tribunals to decree what according to justice it may deem proper. I having answered the proceedings that were served upon me, of the date of the 9th instant.

Pensacola, Sept. 13th, 1817.

EUGENIO ANT'O SIERRA.

Pensacola, Sept. 13th, 1817. Serve notifications to the other heirs.

DOMINGO SAUSA. JOSE CEVALLOS.

148 On the same day we made it known to Mr. Eugenio Ant'o Sierra. We give—

SAUSA. CEVALLOS.

Immediately thereafter we made it known to Mr. Fernando Moreno and Ramon Vallilta. In faith whereof:

SAUSA. CEVALLOS.

On the same day we turned over the proceedings to Mr. Jose E. Caro. In faith whereof:

SAUSA. CEVALLOS.

Immediately thereafter we did the same thing to Mr. Juan Mala-Gosa. In faith whereof:

SAUSA. CEVALLOS.

Mr. Eugenio Ant'o Sierra, testamentary executor of Gabriel de Rivas, deceased, and as of right he may be entitled to before your excellency says: that it having been ordered by the tribunals by the decree of the seventeenth instant to value the arpens of land belonging to this estate, to sell them at public outcry, etc., your excellency will please order that by the same tribunal two appraisers be appointed to assess the value of the land, and that this being done, that what there is to be carried out. All of which to be done, he asks in justice, swears, etc.

EUGENIO ANTO. SIERRA.

Translator's Note: See order of 17th Sept., 1817, for valuation of land and sale thereof towards latter part of this valuation.

Let there be appointed appraisers in the act of notification as it is ordered.

DOMINGO SAUSA. JOSE CEVALLOS.

On the same day we made it known to Eugenio Ant'o Sierra as curator of the minors of this estate, and he as well as the widow, Mr. Juan Malagosa and Mr. Jose Caro said that they named on their part as appraisers to appraise Mr. Franco Bonad and Mr. Enrique Mitchelet, who being thereof informed at the time, accepted the appointment, were sworn fidelity and signed.

FRANCO BONAD,
DOMINGO SAUSA,
ENRIQUE MITCHELET,
JOSE CEVALLOS.

On the same day in this office Mr. Ramon Callilta and Mr. Fernando Moreno, appeared on behalf of the heirs, their children, and said that they named on their part Mr. Carlos
149 Lavalla, who being also present, said he accepted and did accept the appointment, and signed to which we certify.

DOMINGO SAUSA. JOSE CEVALLOS.

In the City of Pensacola on the 6th of Oct., eighteen hundred and nineteen, appeared in this office Mr. Franco Bonad, Mr. Enrique and Mr. Carlos Levalla, citizens of this place, and unanimously said that they ought to value and did value the piece of land that by the interested parties they were named, have accepted and swore with fidelity to value, and in virtue thereof they ought to value it and did value the same at two hundred dollars for the whole, and that it may appear they signed these presents, to which we give faith.

FRANCO BONAD,
ENRIQUE MITCHELET,
CARLOS LEVALLA,
JOSE CAVALLOS.

DOMINGO SAUSÀ,

Pensacola, Oct. 17th, 1817.

Seen— Let the valued land be sold at public outcry at the time ordered, and give notice to the other heirs, of this proceeding, and all done let it appear.

MASOT, HERNANDEZ,
DOMINGO SAUSA, JOSE CEVALLOS.

On the same day we made it known to the interested parties and showed it to Mr. Juan Malagosa and to Mr. Jose Caro, we certify.

SAUSA. CEVALLOS.

To His Excellency the Governor:

Mr. Jose Caro and Mr. Juan Malagosa, the first for his wife, Mrs. Paula Rivas, and the second as tutor of Candita Riera, daughter and grand-aughter of Gabriel de Rivas, deceased, in the proceedings that are being had on the petition of the widow, Mrs. Maria Moreno, with all its vouchers, we do not doubt, for she was left with a large family, and all or most all of them of tender years, for which reason they must have caused her great expense. And as to what refers to the arpens of land as to proceedings to their valuation and value uniting the proceeds to the principal fund, to that if the tribunal deems it

proper there be given to the parties what they are entitled to, being all according to justice, we solicit it and swear, etc.

For wife Mrs. Paula Rivas:

JOSE ESTAVAN CARO.

At the request of Juan Malagosa for not knowing how to write:

JOSE TRUELLO.

150 In the name of the Almighty God, who exists without beginning, and who reigns without end, Amen.

Known all whom this testament and last will shall see that I, Gabriel de Rivas, a citizen of this place, a native of the City of Seville, legitimate son of Antonio and Flora del Caro, natives and citizens of said city, and whom I do not know whether they are living, not having heard from them in several years, being sick in bed with all my senses, memory and natural understanding, such as God, our Master, has been pleased to grant me, believing as I firmly believe in the high and supreme Majesty of the Holy Trinity, Father, Son and Holy Ghost, three persons really distinct, but making but one, and in the incarnation of the Holy Verb made man for our salvation, in which faith and belief I have lived and intend to live until death, fearing death and its uncertain hour as is natural to all, knowing that my time must come, I want to make my will, and for better guidance, I call as my advocate, upon the Sovereign Queen of the Angels, Holy Mary, Mother of God, and our Lady and pray to her that she intercede for me with her precious Son, that he may pardon me the gravity of my sins and put my soul in a way to salvation, with which petition and divine intercession, I ordain it as follows, to-wit:

First. I recommend my soul to the same God and Master who created it, and redeemed it at the price and infinite value of his own precious blood, passion and death.

My body I give to the earth of which it was formed, and that burial may be given it in the graveyard of the faithful, in that manner and form that my executor may order, at whose pleasure I leave the balance of my funeral, such being my will.

Also I order that there be said the three masses for the soul for the repose of mine, and that there be given as charity for once, two bits to each one of the forced mandates, and by which I withdraw them from my property as being such my will.

Also I declare to be married according to the rites of our Holy Church, Catholic and Apostolic and Roman, by which marriage with Maria Moreno, I have had seven children, named Antonio, Maria Josefa, Paula, Gabriel, Aguida and Leonado Rivas, and I declare it that it may appear.

Also I declare as my property the house in which I live with my family and an adjoining house actually occupied by Pablo Granpera and three hundred arpens of land situated outside of this place.

Also I declare that there is due me several sums of money as well by the King as his Royal Exchequer as by differ-
151 ent individuals, and which I request my executor to collect and to that effect to do whatever may be necessary. Also I declare to owe to several persons distinct amount which appear from my obligations or receipts and ask my executors to pay them as soon as is collected what is due me, ahing [having] a perfect knowledge thereof from the fact of having signed for me.

Also I name as curator ad litem of my minor children, Mr. Eugenio Sierra, chief practitioner of the Royal Hospital at this place, which I so declare as being my will.

Also I name as my executor and holder of property, my beloved wife, Maria Moreno, relieving her from all bond, so that by herself and without intervention of law, she proceed to carry out in all its parts this my last will.

Also I declare, institute and name as my only and universal heirs my above referred children to all the property that may be belonging to me after satisfying my debts, and the six hundred dollars of the down of my referred wife, so that with the blessing of God and of mine, they possess and inherit them by equal parts, such being my will.

Also I declare that of the six hundred dollars that I am responsible for the down of my wife, she has received three hundred and fifty dollars in a negro, named Franc or Francisco, so that it may appear.

And I revoke and annul and give as null and cancel whatever other wills or codicils which before this one, I may have made in writing or verbally and which I want to have no effect nor validity in law or out of law, saving and excepting this one which I now execute in that manner and form as to right may be best. In testimony of which this will and testament is dated in the City of Pensacola on the 27th of (September) Feb'y, eighteen hundred and seven, being witnesses Mr. Mattias Cevera, ensign of the Regiment of Louisiana, Mr. Jose Garcia Capitillo, Mr. Bernardo Molino, signing at my request Mr. Jose Maria de la Pena, Mattias Cevera, Bernardo Molino, Jose Garcia Capetillo.

It is in conformity with the original will which remains filed in the corresponding book and by virtue of an order this was taken so as to append to the proceedings of the estate of said Rivas, deceased.

Pensacola, seventeenth of Oct., one thousand eight hundred and seventeen.

—Dollars—erased not to be used.

DOMINGO SAUSA.

Pensacola, Oct. 17th, 1817.

Seen.—As agreed by those interested in the property of
152 Gabriel de Rivas, deceased, is approved what as right ought to be approved, the account and sworn statement that appears and is established, and for which greater validity and force the judicial authority interposes by this decree, therefore let the account of division and partition of said property conforming to will of Rivas and what appears by proceedings be made and presented by all for due approval, and assurance to the minors of their quota after the first sale of the three hundred arpens of land, which will be sold on Monday, the twentieth instant, notices being posted in the customary places as notice to the public apt 16 bits.

MASOT, HERNANDEZ,
DOMINGO SAUSA, JOSE CEVALLOS.

On the same day we made it known to the widow Rivas; in faith whereof:

SAUSA.

CEVALLOS.

Immediately thereafter we made it known to the executor and curator; in faith whereof:

DOMINGO SAUSA. JOSE CEVALLOS.

In the City of Pensacola on the twentieth of Oct., eighteen hundred and seventeen, in the Audience Chamber, being present Mr. Joseph Masot, Military and Political Commandant of this province, associated with the auditor of war and assessor general thereof, with the view of carrying out the sale that was ordered of the three hundred arpens of land belonging to the estate of Gabriel Rivas, deceased, which after the previous calls that were given with the drum, according to custom were offered at public outcry by Joseph Cortex, he announcing clearly and distinctly the piece of land that was sold and exhibiting the figurative plan and the persons attending the sale being informed, of the locality, amount and price in cash at which it would be knocked down, John Chebeaux bid two hundred and fifty dollars, Gabriel de Rivas five hundred and seventy dollars, the said John five hundred and seventy-one dollars, and then Gregario Caro augmented the bid to five hundred and seventy-two dollars, and the hour having arrived, and the said

bid having again in loud and intelligent voice been cried out by the said Cortez, and there being no other person who offered a higher bid, notwithstanding the said bid being cried out several times, it was ordered by their worships in view of its being the hour fixed for closing the sale, that it be knocked down, which with the three customary raps was done to Graegario Caro, and that it may appear he signs with the curator and
153 heirs that were present and to their worships to which we give faith.

GREGARIO CARO,
EUGENIO ANT'O SIERRA,
DOMINGO SAUSA,
FERNANDO MORENO,
JOSE CEVALLOS,
GABRIEL RIVAS,

For my wife, Mrs. Paula Rivas:
JOSE ESTAVAN CARO.

In the said city on the twenty-first instant, appeared in this office Gregario Caro, the same person to whom was bid off on yesterday three hundred plain arpens of land, belonging to the estate of Gabriel de Rivas, deceased, and tendered the amount of five hundred and seventy-two dollars, at which they were adjudged to him as being the best bidder, and so that it may appear we extend this proceedure which he signed, and of which we give faith.

GREGARIO CARO.
DOMINGO SAUSA, JOSE CEVALLOS.

Pensacola, Oct. 21, 1817.

The bidding that was made on yesterday of the three hundred arpens of land to Gregario Caro is approved in all as to right, and therefore the authority and judicial interposes for its greater validity and force and as it appears from the former proceedings that he has paid the assistant witnesses the amount of five hundred and seventy-two dollars, ordered that this amount be deposited in the public office while another order is given and that testimony be issued to the purchaser of the proceedings of the sale of this proceeding if he solicits the same, that it may serve him as a title in form.

Charge three dollars, which with the costs bills will be paid out of the common fund.

MASOT, HERNANDEZ,
DOMINGO SAUSA, JOSE CEVALLOS.

On the same day we made it known to all the heirs, curator and tutor of the estate of Gabriel de Rivas, deceased, as also to the widow of said deceased; in faith whereof:

SAUSA. CEVALLOS.

Pensacola, Sept. 17th, 1811.

Translator's Note.—This is the order to which attention is called by the translator in the first part of this translation:

154

Proceedings heard. Let the arpens of land belonging to this estate be valued and sold at public outcry at the time to be ordered.

Annexed copy of the will executed by Gabriel de Rivas, and let it appear for other proceedings that may be needed.

DOMINGO SAUSA, JOSE CEVALLOS,
MASOT, HERNANDEZ.

On the same day we made it known to the exponents.

SAUSA, JOSE CEVALLOS.

Then (in the original proceedings and not here fully rendered by translation) follows a prayer for the appointment of an accountant to make partition and division. The appointment of said accountant, the notices to said heirs of said accountant.

Taxation of costs of these proceedings, a stated account by the appointed accountant and his prayer that it be exhibited to the heirs. The official notification to said heirs, a signed approval of all of said heirs of said partition and division by said accountant.

An order of Masot countersigned by Sausa and Cevallos to pay over to each party their quota. A notification thereof to all the parties, and finally signed acknowledgments and receipts from all parties interest of having received the portions, to which they were entitled to by the division aforesaid.

STATE OF FLORIDA,
Escambia County.

F. E. de la Rua in charge of the Spanish Archives of West Florida, do hereby certify that the foregoing is a correct translation from the Spanish into English of the original manuscript proceedings now in said archives in the matter of the sale of land of said estate of Gabriel de Rivas, deceased.

Given under my hand and private seal, the official seal being lost or misplaced, this 29th day of July, A. D. 1874.

[SEAL] F. E. de la RUA,
In Charge of the Spanish Archives of West Florida.

The words on the preceding page "State of Florida, Escambia County" and "F. E. de la Rua," erased by me before singning the foregoing certified.

F. E. de la RUA.

STATE OF FLORIDA,
Escambia County.

I, F. E. de la Rua, clerk of the Circuit Court of Es-
155 cambia County, do hereby certify that the foregoing 16 sixteen pages contain a true and correct copy from Spanish into English from the orinigal manuscript proceedings in Spanish now in the archives of West Florida in the matter of the sale of land of the estate of Gabriel de Rivas, deceased, duly certified by me as keeper of the Spanish Archives of West Florida under date of 29th of July, A. D. 1874, on file in case of the Pensacola City Company *vs.* A. V. Caro in said Circuit Court of Escambia County, Florida.

Given under my hand and official seal, this 1st day of May, A. D. 1884.

F. E. de la RUA,
Clerk of the Court Escambia County, Florida.

Defendants offer proceedings of Maria Moreno to sell this particular piece of property for payment of debts and disbursion of proceeds, which document is set out in words and figures as follows:

"*Exhibit* 13."

En la Plaza de Panzacola a siete dias del mes de mil setecientos ochenta y tresante mi el presente Escribano de Guerra habilitado y el suficiente numera de testigos, parecie Gabriel de Rivas y dio que teniendo tratados Esponsales con Maria Moreno, hijo de Francisco ya defunto, y Lorensa mancebo, les qe por hallarse el expresado Gabriel de Rivas al servicio de S. M. qe Dios gue no ha podido hasta la presente eftuarse aunqe tiene el ha hechas las, diligencias, correspondiente de las que, espera las resultas para contraher dichos esponsales hallando por conveniente la dicha Maria Moreno pasar en compania, de su madre, a la Havana, y no tieniendo para su subsistencia en aquella, Capital he venido a hazerle donacion por via de arras y a fin, disfrute de ello como duena propia responsabilidad a cosa devito ni contraiedo por su madre esposo en segundas nupcias de esta Domingo de mauricioni los qe, en adelante ellos puedan contraer sino, que siempre sea la referedad Maria Moreno duena y stopica, pudiendo en caso de enferm edad testar

no fuere servida la hago donacion en la mas debida forma de los bienes y dinero sigtes:

Primeramente seis cientos ps. en plata fuerte,— Item dos pares de hebillas de plata,— Item dos pares aretes de oro,— Item dos anillos de lo mismo,— I-m. pulgeras piedras de Francia,— I-m. dos pares de brochas correspondiente a las, pulseras,— I-m; relicario con su cadena todo de plata,— I-m; un colgante para el cuella de una pajarita guarnecido el
156 collar de grantas y la pajarita de piedras de Francia, cuatro vestidos de seda completos, ocho vestidos de sarasas seis pares, de enaguas blancas, seis de medias, cuatro pares de zapatos dos dozenas de camisas, dozena y media de pannuellos, cuatro barrillas dos enaguas de de seda, doce sabanas, seis almoados, tres colchones, dos calderos, dos peralites, una chocolateria un almirez, un pelox, una docena de sillas, seis docenas de platos, y una de tasas, soperas, y trastos correspondientes, una castor, de cristal, una cama con su mosqueiero y cuatro pantas con su colcha de serasa, y roda pies en, la cama de lo mismo, dos espejos, ... veinte pesos en que fueron comprados, dos pater de mas, dos pares de frasados un par de harillas y unas tenazas y algunas, varias otras frivleras correspondientes al adorno de una muher. Todas lascuales prendas yo el dicho Gabriel de Rivas entregoyhago donacion ad perpetuam a la nominada mi futura murer Maria Moreno para que use y disfrute de ella segun le convenga y solo bajo la condicion que que en cualquiera caso y aconteci miente no sean dichos bienes responsables, a dendosaconacaecidas a su, madre y padrastro, pues en tal, solo caso lo reclamare y pedire como dueno de ellas y a finlos obtenga y se sirva de ellos la pre dicha Maria Moreno y sea legal y verdadera esta donacion hajo las clausulas qeencierra la firmo en esta de Panzacola, a presencia de testigos que lo fueron son Dn. Manuel Estevan Capitan del regimento de Infanteria de Espana, Dn. Juan Pardo Alfuzan y Diego Mallorga, y del presente escriviam de guerra, habilitado en ella. Gabriel de Rivas, Juan Pardo Alfeisam, Diego Mallonga, Manuel de Estebaco.

Es conforme al original que existe en el baul de los papeles de Dn. Francisco de la Rua, escribano que fue en esta Plaza al que no opino y a solicitud de Maria Moreno doy la presente en Panza. a quen el de Julio de mil setece nvata y siete.

VISTS. FOLCH, T-gs.
MILAN CARROSAS.

DIENISIO GARCIA CALDERON.

Recibi de la vida Madama Rivas la contidad de doscientos diez y nueve pesos, des reales que importan las madera, clavo-

san y mano de obra por la composicion que la hize en su casa y cocino, siendo posesion y suga propia, y para que conste le doy para su resguardo en la Plaza de Panz-la, a 11 de Noviembre de 1811.

CARLOS SIERRA.

No. 1.

8| 219, Ps. 2, reales.

Received from Madam, one hundred and ten dollars
157 for eleven thousand shingles at ten dollars thousand, Panzla, 11 Noviember d 1812.

110. dollars. WN. LARNAGAN.

No. 2.

Recibi de Madama Rivas sententa y un pesos dos y medior-eales, importe de dos cientos tablasde 1|2 pulgada y treinta asmue de que recibio de Dn. Millan de la Carrera Panzacola 21 de Noviembre 1811.

8| 71, ps, 1|2. DIEGO de SALAZAR.

No. 3.

Cuenta de Madama de Rivas a saber: un millar de ladrilles par la chimenea de la cocina de su casa . . . . . 8| 15.00
Mas de esterna por construccion 9.00
4 barriles de cal, a diez reales 5.00

Total $29.00

No. 4.

Recibi la cantidad que expresa esta cuenta y para que conste lo firmo en Panzla. a 11 de Noviembre de 1812.

THOMAS BOBE.

No. 4.

Relacion que yo Maria Moreno y Rivas viuda de Dn. Gabriel de Rivas forma de las que dejo mi defunto esposo segun consta por el testamento, los cuales parte de ellos se han vendido sino ha simismo de los que quedan a existentes su fallecimiente a saber.

Vendido a Dn. Franco Bonal una casa perteneciente a los menores hacienda segun consta por la escritura que para en este Gobierno, en el precio de 8| 2080 pesos; etra vendida a Dn. Eduardo Tounes 8| 1500 pesos; Total $ 3580 pesos.

Quedan esastentes pertene cientas ala sucesion en el paraje llamado Bayou Texar trescientos arpendes de tierra que me fueron con cedida por esta Gobierno, como asi mismo unadenda

de trescientos cincuenta que facilite a laestacadada del precinto des esta los cuales no se ha cobrado hasta la fecha, se gasteron en la compostura de la ultima casa como conste por los recibosno I-o asta 4 en plata efectiva, S| 429 ps, 2 Reales, Panzacola 16 de Agosto, de 1817.

MARIA MORENO.

Dijo Yo la abajo firmado de haber recibido de Juan Forbes & Cia. la cantidad de ciento sesenta y seis pesos en mercancias de cuya suma me obligo a satesfaces mensualmente diez
158 pesos, fuerte hasta el entero, pagamdoles del todo de contar de esta fecha, y para que conste, doy esta en presencia de dos testigos, Panzacola y 10 de Agosto de 1806, Testigos:

MARIA RIVAS,
ANDREW FOWLER,
JUAN INNERARRITY.

Son P, 116 No. 32.

Hemos recibido nosotros los testigos de asistencia de la viuda Rivas Ma, Moreno la suma de ocho pesos un real y media por la parte de costa que le corresponde pagar del litis que tuvo con su hermana Josefa y pa, que conste damos esta en Panzacola a 20 de Junio de 1819.

DOMO SAUSA. ANASTO MONDE DEA.

Son S| 8 P, 1-1| 2 r,

Recibi de la viuda de Rivas guarenta pesos por mis trabajo, del remate que se celebro de suscasas que fue las condiciones enter alla y el abajo firmado. Panzacola 13 de Julio de 1810.

F. ORSO.

No. 30.

Yo Marcus Riera vecino de esta Plaza me doy por satisfecha, a la suma qe al respaldo se halla quinientos, P para fomento de los interes en todo el tiempo que ha transcurrido y a la fecha y para que conste doy esta concebido con una cruz en presencia de los testigos, Dn. Martin de Madrid y Juan Bta. Montero.....Panzacola 4 Agosto 4 de 1810.

"SENAL" X MARCOS. SUIS

Testigos; MARIN de MADRID, JUAN BTA. BONTERO.

Son $ 500 No. 29.

Por esta me obligo a pagar la cantidad de quinientes pesos plata fuerte a mi yerno, Marcas Rierra quien me ha presentado cointeres de cinco pesos, todso los mesas y me obligo a pagar-

selos mi persona y demas habidas y por haber immediamente me las pida, y para que conste y le sirva de resguardo lo firmo en Panzacola a 1 de Enero de 1806.

GABRIEL deRIVAS.

Recibi de Dn. Hortencia Armenes la cantidad de cuarentapesos que me ha prestado para mis urgencia las que me obligo a pagar a su orden y para que conste, doy es ta en la Hav, a el 28 de Noviembre de 1809.

ANTONIO RIVAS.

8| 50 Pesos No. 28.

159 Diago Yo Dn. Frances Bonal como ha recibido de Dn. Antonio Rivas dle pasaje de la H-Bana, a Pensaquolo y para que conste, le doy este en Panzagola a dia 10 del mes del ano, de 1810.

FRANCO BONAD.

No. 27.

He recibido de Dn. Antonio Rivas cuarenta pesos por rempe un del pasajero a la Habana en el Bergatin "Minerva," Panzacola y Julio 16 de 1810, Tambien $ 10.00 mas.

$ 50.00 VINCENTE de OERDONGOIATI.

No. 26.

Pagare a Dn. Francisco Bonals dos Botelos de aceite y dos p de tabacos que son, 3 p-4 reales, RIVAS.

15) No. 25.

Pagare a Dn. Franco Bonal ocho pesos y cinco reales.

8| 8.P MA. MORENO.

No. 24.

Pagere a Dn. Francisco Bonar dose pesos por un barril de ajos. MA. MORENO.

8| 12 No. 23.

Pagare a Dn. Franco Bonad sesenta y cinco pesos.

8| 65. MA. RIVAS.

No. 22.

Navitas azucar 7 ggls. 16 P, 50 libros de cafe, 22 gg. 13ps 25 libros garbanza 2p, 06 ps, 4 rls. mas $ 12.00—4p-4reales—25 libros.

Pagare a Dn. Franco Bonad cuarenta y siete pesos cuatro reales. MARIA MORENO.

Son $ 47p 4 reales No. 21.

Pagare a Mr. Col la cantidad de sesenta y siete pesos y un real. y mas que le pagare cuando me page Dn. Franco Bonard, y para que conste la firmo en Panzacola 2 de Noviembre de 1810.

MARIA MORENO.

67 ps. No. 20.

Sr. Bonal me hara V, la Gracia de pagar a Monsen Orno este mi recibo favor que espera de V, Maria Moreno Pino le Mellaen la seamana.

LOUIS ARKALLOS.

160 Dijo Yo Gabriel de rivas vecino y del comercio de esta Plaza como por este mi recibo pagare a Dn. Jose Salvador la cantidad de ciento setenta y tres pesos, cuaro reals, los mismo fue pagare cuando venga, dinero la "Plaza" y para que conste y en todo tiempo tengo el debido complimiente de esta, en la Plaza de Panzacola a 4 de Octubre de 1812, y por no saber firmo lo firmo mi esposa.

ANTONIO MONTERO. MARIA MORENO.

S| 173p, 4 reales No. 19.

19, 2 reales por los tres recibos de los escribanos.

---

total $192, 6 reales por dho, Rivas.

Recibi de mi hermana Maria Moreno la cantidad de $ 114 pesos fuertes por mi un recibo, que aun tiene en los archivos el Auditor de Guerre en esta Plaza. Panzacola 26 de Enero de 1811.

ANTONIO LONGINOS.....no saber firmo,

ARNEGA ORNITIA.

FRANCO MORENO.

Son No. 114.00 No. 18.

Cuenta de Maria Rivas a saber -Ps-rls. por una papelina 6 ps 1 rl cosimedio alabnaza y una epaje 11-2 por la estacado 11-1 total 10-6reales. Panzacola Julio 1 de 1809.

RAMON SANTIAGO.

No. 17.

Madama Rivas a Juan Forbes & Cia. debe.

Por un Chapean No. 2, 1 " 1m. No. 1.	No. 3-0
" 2 yardas " bersopson" a 15	3-6
" 2 Convertes a No. 4	8.0
" 3 LLardes de percal a 7,-2.	2-5

" 2 pares de Bas a 11, 2 . . . . . 2.6
" 1 chal. de cotton . . . . . -2.4

" paqueta pondre a 1, encre 22.5
3

23.00
" une piece taile V Irlan 15.04

38.04

MARIA MORENO.

No. 15.

161 Recibi de Dn. Engo. Sierra dies pesos y medio importe de tres piesas cinta blanco. Panza. 6 de Mayo de 1808.
PEDRO SANA.

No. 10 p, 1|2 No. 14.

Pensacola 6 de Agosto de 1810 denda M-ma, Rivas aduenda a Juan Rismundo saber:

Un barril de Manteca 237 libras No. 35, Dor aquita.
JUAN RISMUNDO.

No. 13.

Pensacola 4 Agosta de 1810, deve M-ma, Rivasa saber:

Dgo Torrez

Un par de medios negras . . . . . No. 2-4 reales
una piesa de tela . . . . . 43.
por hilo . . . . . " 4
1|2 barril de arroz . . . . . No. 5.6

No. 53.6

No. 12.

Por Aguste Juan Rismundez

Pagare a la orden de Juan Rismundo la cantidad de ciento veinte dos pesos, siete reales en el corriente del mes Enero proximo por valor recibido del mismo. Pensacola, 7 de Octubre de 1810.
MARIA MORENO.

No. 122 p 7 reales No. 11.

Recibo de Madama Rivas la cantidad de veinte cuatro pesos cuatro reles de varios antos que le he suministrado falicite en la enfermedad de mi marido Panza. 6 de Mayo. de 1808.
PEDRO SANA.

No. 10.

Recibi de dna. Maria Rivas la cantidad de ochenta y dos pesos cuatro reales y medio importe por varios efectos tomados en el almacen por lasubsistensia de mis hijos, y para se reguardo le doy este en Panzco a 5 de Agosto de 1810.

PEDRO SANA.

No. 82p, 4-1| 2 reales.

No. 9.

Recibi de la Sra. Rivas la cantidad de un peso correspondiente sepultura de su esposo. Panza. 8 de Mayo de 1808.

Son en Peso

ALONZO GUTIERREZ.

No. 8.

162 Recibi de Dn. Eugenio Sierra la Cantidad d de dos pesos y un real por ocho velas de cera y 6 anos de cinta. Panza. Mayo 9 de 1808.

LOUIS AMAND.

No. 2 p, 1 real.

No. 7.

Panzacola 29 de Abril de 1808.

Recibi de Dna. Maria Moreno siete pesos p-6 seis por seis misas que celebre por la intencion de Don Gabriel Rivas por diferente promesa una a la pasion de Jesus, Unaa nuestra Sra. la Sirgen Maria, una a nuestra Sra. la virgen del Rosario, una aotra Sra. 1 Dolo, una a otra Sra. del Rosalio y una a las almas del purgatorio y otramesa que mando cerebra el mencienado Ribas porsu agoniay para ser ase lo firmo.

SEBASTIAN VIVES.

Son 2 Ps.

No. 6.

Panzacola 30 Abril de 1808.

Recibi de Dna. Maria Moreno viuda de Dn. Gabriel Ribas tres pesos Limosno de tres misas que son las tres del alma que aplicare por su defunto Marido y para qe coste lo firmo. fecha ut supra.

TN. SEBASTIAN TORY de VIVES.

Son 3 Ps.

No. 5.

Dido Yo el abajo firmado que resevi de Dn Heugenia Sierra la cantidad de treinta reales que me paga por sesenta velas.

Panzacola 7 de Mayo de 1808.

ANTONIO MAYOLE.

3 ps. 6 rl.

No. 4.

Recivi de la viuda Madama Rivas 5 Ps.-2rls, de siete anas de cinta a razon de 6 rrls. ana oy dia 8 de Mayo de 1808.

JOSE SAPIOLA.

No. 5ps,2rl. No. 3.

digo Yo el abajo firmado qe. he recivido de Dn. Eugenia Sierra, ocho peso por unataud pa.el defunto Gabriel Rivas.

Panzacola y 2 de Mayo de 188.

No. 8ps. FRANCO SOMARA.

No. 2.

Recivi de Dn. Engo. Sierra viente y ocho ps. seis rls. importe del entierro de Gabriel Rivas y para qe, conste, lo firmo.

I. THOMAS.

Relacion que Yo Ma. Moreno y Rivas viuda de Dn. Gabriel de Rivas por de las gestos originado en alimento de mis hijos como ygualmente dos que pagado, por mi defunto Espose,
163 desde su fallicimente que fue el 28 de Abril de 1808, como constas por los recivos numerado.

a saver.

	Pesoe-rl.
Por el Yatiora misas del Alma, como consta por los reciva desde I-o acta 8 el total	58-7
Pagado al Sr. Auditor de Guerra por Abrir el testamento, de mi defunto esposa	22-4
Pagado a Dn. Pedro Sans como consta por el numero No. 9 en plata	82-4
Pagado al misimo como consta por el recivo No. 10 en plata	124-7
Pagdo. a Dn. Juan Rismundo como consta por el recivo No. 11 en plata	122-7
Pagdo. al mismo como consta por el recivo No. 12	53-6
Pagdo. al mismo como consta por el recivo No. 13	35-
Pagdo. a Dn. Pedro Sans como consta por el recivo No. 14 en plata	10-
Pagadoa la casa de Tounes como consta por el recivo No. 15 en plata	38-4
Pagdo. a Ramon Santiago como consta por el recivo No. 16 en plata	50-6
Pagdo al mismo como consta por el recivo No. 17 en plata	10-6
Pagdo a Antonio Longinas como consta por el recivo No. 18 en plata	114-
Pagdo a Dn. Felix Salvadon como consta por el recivo No. 19 en plata	192-6
	$ No. 816-7

Sumala Buelta —

Suma de la Buelta....	816-7
Pagado a Luis Arnaud como consta por el recivo No. 20 en plata.....	67-
Pagdo a Fran-co Bonals como consta por el recivo No. 21 en plata.....	47-4
Pagdo al mismo como consta por el recivo No. 22.....	65-
Pagdo, al mismo como consta por el recivo No. 23.....	12-
Pagdo al mismo como consta por el recivo No. 24.....	8-
Pagdo al mismo como consta por el recivo No. 25.....	3-4
Pagdo a Dn. Vicente Ordeogote, por el pasaje de ma defunto hijo Antonio Rivas a la Habana a fin de co brar el dinero de la estacada del resinto de esta Plaza en tiempo de Dn. Vieceato Yote decomo constapor el recivo No. 26, en plata.....	50-
164 Pagdo a Franco Bonals por el pasaje de lo habana a esta Plaza de mi defunto hijo como consta por el recivo No. 27 de su regreso.....	40-
Pagdo, a Dn. Jeronimo Jemines como consta por el recivo No. 28 en plata.....	50-
Pagado, a Dn. Marcus Rierra como consta por el recivo No. 29 en plata.....	500-
Pagdo a Jose Orgo, como consta por el recvo, No. 30....	40-
Pagado a los testigos de assistencia, como consta por el recivo No. 31 en plata.....	8-1
Pagado a Forbes y Compania como consta por el recivo No. 32 en plata.....	166-
Total..... 1874-0	
Suma del frente..... 1874-0	
Por el luto de mi familia le gastaron.....	150-
Recivo de mi defunto hijo Antonio Rivas de sus alcanses en plata efectivo, como consta por el ministerio de la haciendo y havere amenudo en alimento de mis hijos y demas gastos que se requiren a mia casa de familia.....	339-
Total.... ....$2363-0	

Estas dos mil trescientos sesenta y tres pesos un media real se han envertidaen deudos pagados, el alimento de ochohijos que mi dejo mi defunto esposo a su fallicimeiente; y demas occurrencios de la familia como consta, por docmenta, que acompania esta relacion menos el luto no tener presente a quienes, lo he comprado como hasi mismo los veinte y dos

pesos 2 reales del Sos. Auditor de Guerra quo no tengo recivo de la cantidad, y para que conste lo firmo en Panz-la. a 16 de Agosto de 1817—

MA. MORENO.

Sor. Governado y Sub-do. a Rl. Hacienda—

Maria Moreno vieda de Gabriel de Dn Rivas con la atencion que a V. S. deve, expone que habiendo ajustados las cuentas de la sucesion como consta por las dosrelacionesque devedamenta presento como hasi mismo mi carta de dote para aclarar lo testamenteria y hacer las reparticiones que eran pondan de justicia a los portanto, A. V. S| suplica su sirva mandor sobre el particular, lo que Vs hallan, por mas conbeniente gracia que espero recivia de la bondad y Benignidad ade Panzacola 13 de Agosto 1817—

MA. MORENO.

Panza. y Agosto 18 de 1817.

Pase al Sr. Asesor General y Auditor de Guerra, con-
165 losdocumentos que ha compana—

MASOT.

.....traslado de los cuentas que presenta la viuda a los herederos majores y Curador de manores pa-qe conste vista digan lo que se lesofrezca,.....

Art 42 V Masot Domingo Sausa Hernandez. Jose Cevallos.

En el mismo Dia lo hicimos saver a la Va Da. Maria Moreno damos Fee—

SAUSA. CEVALLOS.

En el mismo dia la hicimos saver a Dn. Eugenio Antonio Sierra y le conferimos el tras lado que, que le previene como curador de los menores damos fee—

SAUSA. CEVALLOS.

Dn. Eugenio Ant. Sierra ante V. S. con el mas devioda respito dice ql. con motibo de hallarse sumamentede cargato de laasistencia de enfermos del vecindario se ve en la precision de suplicar al Tribunal se sirva conferir traslado de las diligencias de latestamentaria, de Gabriel de Rivas a los herederos Mojores suspendiendo el que a el se le aviadado pa. concluirla de aver evaguado las tras por su parte los cuyos en cuya entermedio podra desocuparse en algun modo y cumplir, con lo que el Tribunal hadispuesto portanto—

A. V. S supco. se sirva mandar hacer como solicite qe es

gracia y justicia qe. espera de la justificada de V. S. Panzco. 22 de Agosto de 1817—

EUGENIO ANTO. SIERRA.

Panza. y Agt. 27 de 1817.

como pide—

DOMINGO SAUSA, JOSE CEVALLOS.

Sr. Governador

Ramon Villaltra y Dn. Fernando *oM*reno, en representacion de nuestros menores hijos, nietos y herederos dle defunto Gabriel de Rivas, contestando al tratado que se ha servido V. S. mandarmos conforma a peticion de D, Eugenio Sierra de las diligencias principados en el mes de Agosto proximo pasado por Da. Maria Moreno viuda de Rivas con motivo de serer a justadas las cuentas de la succesion y para el fin de aclarar la testamentaria y hacer las reparticiones que entendremos seran de los bienes de dicho, defunto que lo es cerca de diez anos, hace como mejor corresponda decimos que habiendo examinado can todo atencion los papelepresentadospor la promovente no hemos hallado testamento, inventoria avalues ventas liquidacion particioni otro, recado alguna que dijo con la causal y objestos del escrito de folios 42 en cuya virtud, y no siendo, dable formar juicio nei venir en conocimiento
166 de cosa alguna sobre los recibes relaciones y demas papeles presentada por dicha viuda ni sobre lacontestacion de Dn. Eugenio Sierra a quien se confirio el premir traslado. Suplicamos a V. S. se sirva decretar la Providenca. que en justicia corresponda, teniendo a bien declararno nosparen perjuicio las costas cansada o que se causaranen este expediente que por no ocasionarlas no hemos promovido en vista de que nuestras escasos demandadas de la miserables situacion del Pais no nos permitiria satisfarcerlos. Juramos no procedor de malicia y lo demas necasario Va, Panzacola, 6 Septiembre de 1817—

RAMON VILLALTA FERNANDO MORENO.

Panzacola y Sept. 9 de 1817.

Siga la vista con el curador—

DOMINGA SAUSA.

En el mismo dia lo hicimos saver a D. Ferndo. Moreno damos fee,

SAUSA. CEVALLOS.

El mismo dia lo hicimos saver al curador Dn. Eugenio Ant. Sierra damos fee,—

SAUSA. CEVALLOS.

Sor. Governador.

Dn. Eugenio Antonio Sierra Albacea testamentario del defunto Gabriel de Rivas ante V. S. con el debido respeto dice: que eviendo vistolas cuentas qe presenta la viuda rivas, le parece estan aregladas a lo muchas gastos que no se oculta ha tenido siempre con su numeros familia y esta en repetidosestaciones casi siempre algunos de ellos enfermos.

Que en la casa haside indispensable hacer repetidas compesiciones chimeneas & por que cuando se comprro salo, era unbiejoalmacen, y aunque han querida reformarlo en varia ocasiones, unuca han podido emendor de su mala construccion que tuve en el principio a pesar de los gastos que han hecho.

Que a la Muerte del referido Rivas no se hallo otras bienes qe. las dos casas, pues su dilatado enfermedad die margen, a agotan quarlos medias avian pedido grangear en una miserable tiendo, tanto qe— a mi vista creo si vien me acuerdo; no falto una buena almaque dio ropa par vastir al defunto con cuyos motibos parecio paderse disimilar evista el gasto del inventario y abaluo dle unico vien qe. eran las dos Casas.

Que sobre los pagas echos solo ha notado, no haberse pagado el facultatibo qe. asistio al difunto notando asi mismo, no avirse sacado testimonio del testamte. qe deve emirse a las diligencias; y por lo que corresponde a los tres cientos Arpanes de tierra devera procederse a la balua y venta pa. reunir a la masa comun su producido, y hacer la particion los men-
167 ores y segurar a cada uno lo qe. corresponda; siendo a las sevias disposiciones del tribunal resolver quanto en justicia tubiere por con veniente que dando por contastado la vista que se me ha dado de las diligencias confecta de nueve corriente, Panza. 13 de Septiembre de 1817—

EUGENIO ANTO. SIERRA.

Panzacola y Sept. 13 de 1817.

corra laveta con las demas hereder es—

DOMINGO SAUSA JOSE CEVALLOS

En el mismo dia lo hicimos saver a Dn. Eugenio Anto. Sierra damos:—

SAUSA. CEVALLOS.

Seguidamente lo hicimos savero a Dn. Ferndo Moreno y Ramon Villaxta damos fee—

SAUSA. CEVALLOS.

En dicho dia confiamos el Franco. de a D. Jose Caro damos fee—

SAUSA. CEVALLOS.

Seguidamte. verificamos la mismo deliga. en Dn. Juan Malagoza damos fee;—

SAUSA. CEVALLOS.

Dn. Eugenio Antonio Sierra Albacea Testamentario del defunto Gabriel de Ribas como mas en derechocoresponda ante V. V. dice; que aviendose mandado por el tribunal por decreto de diez y siete del corriente se tase los arpanes de tierra pertenecienta a esta Testamentaria, se saquen a venta y pregon & se hade servir V, s y mandor qe. por el mismo Tribunal sean nombrados dos peritos para verificar el abaluo de los referidos arpanes de tierra y fecho se sigo, a lo demas que esta prevenida siendo asi de hacer en justicia qe. solicito juro, etc.

EUGENIO ANT. SIERRA.

Nombren tazaderes en el acto seles notifica como esta mandado—

DOMO. SAUSA JOSE CEVALLOS

En el mismo dia lo hicimos saver a Dn Eugenio Anto. Sierra como curadorde los menores de estasubsecion y dixeron tanto esos como la viuda Dn. Juan Malagoza, y D Jose Caro, y qe nombraran por su parte por peritos avaluadores a Dn. Granco Bonales y a D. Enrique Michlet, los que enterados en el miso, acto aceptaron me Juraron de fidelidad, y firmaron de que certificamos—

FRANCO BONALES ENRIQUE MICHELET.
DOMINGO SAUSE JOSE CEVALLOS.

En el mismo dia comparecieran en estes oficio los herederes por parte de sus hijos, Dn. Ramon Villalta Dn Fernando Moreno y dijeronnombraron por su parte a Dn. Carlos Savalle, el que estando ygualmte. presnete dijo que aceptora y acepto juro de fidelidad, y firmo de de que centificarmos.

DOMINGO SAUSA JOSE CEVALLOS.

168 En la Plaza de Panza. a seis de octubre de mil ocho cientos dia y siete comparecieron en esta oficio D. Franco Vonales Dn. Enrique Michelet y D. Carlos, Laval le vecinos de esta Plaza, dejeron unanimes que devian, y estimaron elpano de tierra que por las partes interesadas, se les hanom brado y han aceptado, y jurado de fideleda, y que en su virtur devian estimarlo y lo estimaran en dos cientos pesos el todo, y para su constancia lo primarar de que damos fee;—

FRANCO BONALES ENRIQ. MICHELET.
CARLOS LAVALLE
DOMINGO SAUSA JOSE CEVALLOS

Panzo. y Oct. 7 de 1817.

Vistos saguae a venta y pregun la tierrapasada pr. el moedro y due una a los demos, hered-s. de esta exped-te y que conste entregere. Ta, 16—.

MASOT, HERNANDEZ,
DOMINGO SAUSE JOSE CEVALLOS

El miso dia lo hicimos a los interesados dimos vista a Dn Juàn Malagoza y ha Dn. Jose Caro damos fee—

SAUSA. CEVALLOS.

Sor. Governador

Dn. Jose Caro y D Juan Malagoza, el primero por su esposo la Da. Paula Rivas, y el segundo como tutor de Da. Candida Riera hija y hieta del defunto Dn. Gabriel a Rivas en las diligencias que le estan hebacuando a pedimento de la viuda, y de el Albacea tetamentario de Eugenio Sierra, ante V. S. como mas haya legarderecho decimos que la cuenta presentado por la viuda Da. Maria Moreno, contodos sus comprobantes no nos que da duda por haver que dado con largo familia y todos o, lo major parte de pocos anos de cuyos motibosse le deben haben ocasionado muchos, partos y por lo que respecta a los arpenes de tierra que se proveda a su abaluo y benta reuniendo su produisdo a lamata principal, pa que se el tribunal lo tiene abien se de a las partes lo que les corresponda, siendo esta de hacer en justicia que solicitamos, y juramos &,

Por mi esposa Dna. Paula Rivas.

JOSE ESTABEN CARO

A ruego de Juan Malagoza
por no saber escribit
JOSE TREULLO

Testam Panzo

En el nombre de Dios todo poderoso que vive sinprincipio, y reyna sin fin, Amen. Se pan quantos, esta carta de testamento ultimo y postrimena voluntaodieron como Yo Gabriel de Rivas vecino de esta Plaza natural de lo Ciudad de
169 Sevilla, hijo legitimo de Antonio y de Flora del Caro naturales y decimos de lamismo ciudad, los quales ignore si viven por haber muchas anos que no he tenido no hora de ellos hallandome enferno, en cama en mi entero juro memoria y entendimiento natural tal que dias nuestro Senor hasido servida Danuel eneyendo comofermemente creo en el alto y Caverane Misterio de la Santisme Trinidad, padre hijo y Espiratu Santo tres personas realmente distintas y una, veradera y en el de la encarnaciondel ver divino hecho hombre para nuestra remedio, en cuya fe y eneencia he vivido, y protestohacerlo hastamorir-

teniende a la muerte que es natural a todo criatura su bor-
amuerta proviendo que ha de llegar launa, quierro hacer el
testamento y para su major direccion enboco por mi abagado ala
Soverana Reyna de los Angeler Maria Santisima, Madre de Dios
y Senora, nuestra, y le suplico que interseda por mi con su
preciso hijo, perdone lagraveda d de mis culpas, y ponga mi
Alma en correra de salvacion, en cuya suplica, protexta y diyino
invocacion lo ordena en la forma siguiente—

Primeramente encomiendo mi Alma al mismo Dios y Sor.
que la creo y redemio con el precio y valor infinite de su prec-
iosa sangre, Pasion y muerte, el cuerpo mando a la tierra de
que fue formado y que se mide sepulture en el campo Santo
de los fieles en el modo y forma quedespuciere mi Albacea, a
cuya disposicion dexo lo demarde mi entierra, por ser asi mi
boluntad.

Ytem: Mando me digan las tres misas del alma por el der-
canzode la mia y que se der dede Simonia dosreales por una ves
a cado una de las mandas forzosos con que los separo de mis
bienes por ser asi mi Voluntad.

Ytte: declaro ser carado segun orden de nuestra, Sante
Madre Iglecia, C. A. R. de cuya Matrimonia con Maria Mar-
eno he teniendo siete hijos nombrado Antonio, Maria Josefa,
Paula Juana Gabriel, Aguardo y Leanardo, de Rivas para que
conste.——

Ytem: Declaro tenor por mis bienes una casa en que estos
alexado con mi familia lacontigua ocupado actualmente por
Pablo Granpera, y trescientos arpanes de tierra cituadosextra-
muros de esta Plaza.——

Ytem: Declara que se me deven varias cantida das, de den-
ero tanto por el Rey, O sus real hacienda como por distintos
particullres las que encargo a mi Albacea las cobre haziendo
quantas diligencias necessarios al efecto.—

Ytem: Declaro que Devo a barios personas distintas can-
tidadas. que constan, de mis obligaciones o recibos firego
170 a mi Albaces las, pagus luego que cobre lo que se me
deve como qe. tiene perfectovonveni enmente, de las que
son porhaverlas firmado por mi.—

Ytem; Nombro por Curador adlitem de mishijos menores
a Dn. Eugenio Sierra practicamte. Mayor de real Hospital de
esta Plaza, lo que asi declaro por ser mi boluntad.——

Ytem; Nombro por mi Albacea y tenedora de bienes a mi
querida consoste Maria Moreno, relevandola de toda fiansa
para que por si mismo y sin intervencion de la justicia pro-
ceda a darcomplimento en todas sus partes a esta mi ultima
voluntad.—

Yttem: Declara instituyo y nombre por mis unicosy uni-

versales herederos a los referidos mishijos de todos los bienes que me correspondar satisfechas misduedas y los seis cientos pesas de la Dote de mi referida consorte para que consta vendicion de Dia a la mia los hayan y hereden por eguales partes por ser asi mi boluntad.—

Ytem: Declara que de los seis cientos pesos de que soy responsable por la dote de mi esposa ha recivido esta tres cientos y cincuenta pesos en un Negro nombrado Franc. o Francisco, pa. que con ste.

Y revoco y anulo doy por nules y cancelados cualquiera otros testamentes, o codicilos que antesde esta haya hecho por escrito o de pa libra losque quiero no valgan ni hagan pr en juicio ni fuera de el salbo este que al presente otorgo en aguellavia y forma que nua haya lugar en derecho en cuya testimonio es festra esta carta de testamte, o en la Plaza de Panzacola, a veinte y siete de (Septiembre) Febrero de mil ocho cientos siete, siendo; testig. D. Machas Cervera Sub-l del Reg-to. de la Luis-a, D. Jose Garcia Capetillo, Dn. Bomardo Moleno firmando a mi amigo, Dn Jose Ma de la Pena.

Matias Cervera Bonardo Moleno, Jose Garcia Capetillo.

Es conforme al testamanto original que se halla——en el quaderno correspondante por virtud demando se saco eitepa. unir elas Dilig. acta futamentaria de dho defunto Rivas Panzacola siete de octobre de mil ocho cientos diceysietepesos rayarnovela——

Panza. y Octe. 17 de 1817. DOMINGO SAUSA

Vistos De conformedad de los interesados a loa bienes el defun- Gabriel Rivas se apruebo guantes ha lagis no la acerta y relacion par jurada qe. como aparecia pa. cuya major seguredad y guerza se interpone laautoridad judicial p, aste decreto en causega formesa la cuento de division de particionde los bienes arreglardose a la——testamentariade Rivas y a lo qe. consta de ellos presentandose p todos pa. la debido aprobacion y aseguras
de las menores y practicando la venta de los tres cientos
171 arpanes de tierra de qe se hara remate el lugnes veinte
del corrte, poniendose carteles n los parajes acostanbrados pa. noticia al publico Asst, 16 reales.

MASOT HERNANDEZ
DOMINGO SAUSA. JOSE CEVALLOS.

En el mismo se lo hicimos saver ala viuda Rivas damos fe—
SAUSA. CEVALLOS.

Seguidamente la hicimos saver al Albacea y curador damos fee,—
SAYSA CEVALLOS

Dn Santiago Coleman Presbo Vigo. y cura de la Yglesia parroquial de San Miguel, de Panzacola.

Certifica que en el libre de defuntos de esta parroquial al folio 98 se halle, una partida cuya tener es el sigui. en la Plaza de Panza. a veinte y nueve de Abril de mil ocho cientos y ocho, Yo Dn Sant. Coleman cura Vio. de la Yglesia parroquial de Sn. Miguel de dha Plaza de supultura, en el camposonto de ella a Gabriel de Rivas vecino de lareferido Plaza hijo legitimo de Anto. y de Florentina de Torro natural de Seville Rivas de Andalusia, de estado casado de edad de cincuenta y quarto anos murio el dia veinte ocho del expresado mes haviendo testado y recivido lo SSan. Sacramtos. y pa. qe. conste lo firmo,—

Santiago Coleman.

Concuerda con la partida originalmente en dho libro a la qe. me refiera y pa. qe. conste. a pedimto. de parte doy la presente en Panzacola a 8 de Octubre de 1817.

SANTIAGO COLEMAN.

Dn. Egenio Ant. Sierra en las diligencias de la testamentaria de Gabriel de Rivas Albacea testamentario, de ella, como nas en derecho se requira ante V. S. dice; que ajunta compana lafee, de muerte de dho Rivas para que se sirva V. S. haver pr. presentada y mandar se una a las diligencias de dho testamentaria para que obre alos fines, qe. convenga siendo asi de hacer en justicio que pido juro &,

EUGENIO ANT. SIERRA.

Panzacola y Oct. 15 de 1817.

Por presentado la fe, de muerte de Gabriel Rivas agreguese a su testamentoria.

DOMINGO SAUSA JOSE CEVALLOS.

Cuenta de la assistencia echo y suministracion de medicamos os a Gabriel de Rivas en su larga enfermedad Septiembre tres de mil ocho cientos siete.——

Por quartro libras digestivo animado a veintereales libra		10"
Por una y medio de quina.....		6"
Por ocho onzas Balsamo Catolico a dos reales onza.....		2"
Por seis id tintura de mirrar a id.....		1-4
172 Por las Bisitas dirrias y curaciones de dos veces por dia en los ultimos tiempos de la abertura del tumor asta el 28 de Abriel de 1808 qe. murio sin cargo las extraordinariasy ana de las cotidiana diarias rebajando mas de dos tercias en consideracion a la viuda		38-
		57-4

Panzacola 2 de Octubre de 1817.

EUGENIA ANT. SIERRA.

Sor. Governador.

Dn. Eugenio Ant. Sierra Albacea testamentario del defunto Gabriel de Rivas, ante V. S. con el debido respeto dice que adjunta acompana la cuenta de la assistencia de dho Rivas qe. por las muchas es caseces qe. havado y el ne averse terminado la testamentaria no la havia presentado para su divido pago portanto——

A V S, supaco se servir mandar se reciva y una a las diligencia de dho testamentaria, serviendos a si mismo, mandar le sea pargada de las masa comun depositado y al tiempo de pago de costas de dho testamentaria la suma de los cinquenta; gracia y justicia que espera de la justificada de VS, Panza. 7 de Octubre de 1817.

EUGENIO ANT. SIERRA.

Panza. y Octub. 7 de 1817.

Pase al Sr. Auditor de guerra.
MASOT.

Panza. y Oct. 8 de 1817.

Por presentado con la adjunta cuenta traslado a la viuda y herederos pa. regr esta qe. firmen al tmpo. de la notificoson digan si estan conformes.

MASOT HERNANDEZ.
DOMINGO SAUSA. JOSE CEVALLOS

En el mismo dia lo hicimos saver a Dn. Eugenio Sierra damos fee:

SAUSA, CEVALLOS.
ale conformo ale conforme

MARIA MORENO. Por mi esposa DA. PAULAS RIVAS
Ale conforme JOSE ESTAVAN CARO.

como Albacea y Tutor de Candida Riera

y por no saver escriber lo firma a mi ruego el subte. de la Snr. Dn. Jose Tuello. a ruego de Dn. Juan Malagosa.

JOSE TRAELLOS a le conformo
RAMON VILLALTA.

Yn contisiente y lao verificacamos en los herederos D.
173 Ramon Villalta Dn. Fernando Moreno, Dn. Gabriel Rivas, D. Juan Malagosa y Dn. Jose Caro, damos fee:

DOMINGO SAUSE CEVALLOS.

En la Plaza de Panzacola a veinte de Octobre de mil ocho cientos diez y siete, setando en la sala de su audiencia el Senor D. Jose Masot comandante Politico, y Militar de esta prov-

incia en union del Senor Auditor de guerra, y asesor General en ella a fin de dar cumplimento el remate prevenido a los tres cientos arpanes de tierra planes pertenecientes a la sucesion, del defunto Gabriel de Rivas, y previo las llamados que sedan por el tambor sepan costiembre, se saco a pregon por Jose Cortes, expresando Clara y distintamente el pana de tierra que se vendia con demonstracion, del plane figurativo y enforados los corramentes del paraje al cantidad y precio de contado en que devica rematarse of recio dar por el D Juan Chebeau, dos cientos cinquenta pag. D Graviel de Rivas quinientos setenta, y correlatiomente auvintto lamente la pajaen Gregario Caro en quinientos setenta y dospesos, y siendo la hora senalada y oobiendose a pregoran en alta y cintes giblesbose por el citado Cortes y no haviendo otra persona que la aumentose sin embargo de haberse repetido, por varios veses mando Sr. era siendo ya la hora sinalada se rematare como efectivomente se remato en el citado D Gregorio Caro con las tres Golpes acustambrados y pa. que constaria lo firmo este con el curador y lo herederos qe. se hallam presentes con sus Senoria e, qe damos fee.,

EUGENIO ANTO. SIERRA
FERNANDO MORENO.
DOMINGO SAUSA.

GREGORIO CARO
Por mi esposa PAULA RIVAS
JOSE ESTEVON CARO.
GABRIEL RIVAS.
JOSE CEVALLOS.

En la mencioada Plaza aveinte y uno los carrte comparecio en esta oficio de Grego. Caro el mismo aquiene se remate ayer los tres cientos arpanes de tierra pertenecientes a la succesion del defunto Graviel Rivas, y exivio cantidadde quinientos setenta y dole ps. on que le fue adjudicado pr. ser el major postor y para que asi conste lo ponemos por diliga. que firmo en que damos fee.

GREGORIO CARO.
DOMINGO SAUSA JOSE CEVALLOS.

Panza. y Octubre 21 de 1817.

Vistas se apreciva quanto ha lugar en dro el remate que se ha verificado ayer di los tres cientos arpanes de tierra plaos en D Gregorio Caro, y en su virtud se interpone la autoridad y decreto judicial para su major validacion y firmesa, y mediante a que consta de la diliga. antecedente ha entregado a los
174 testigos de esistencia el importe de los quinientos setenta, y dos pesos queden e estos depositados interim se

de otra providencia en el oficia publico, y duele de rematadan testimonia. de la diliga. remate y de esta prov-a. si lo solciitare pa que le sirva de titule en firmo asesa tres pesos que con las costas, se satisfaron de la masa comun.

MASOT HERNANDEZ
DOMGA. SAUSA JOSE CEVALLOS.

En el mismo dia lo hicimos saver, a todos los herederos curador, y tutor de la subcesion del defunto Dn Gabriel Rivas, como asi mismo a la viuda de dho difunto damos fe.

SAUSA. CEVALLOS.

Panza. y Oct 27 de 1817.

Dn Eugenio Anto. Sierra en las dilig-s. de la testamentaria de Gabriel de Rivas como Abacea testamentaria y los ne mes en derecho seve quiera ante V S dice; que aviendose verificado la venta y remate del pano de tierra correspondiente a dha testam-a. unico vien quequedav por venda yeva quan seteade servir V S y mandar que por el tribunal se nombre contaden para hasen la devision y particion de vienes que corresponde a la viuda y menores tiende asi de hacer en partia jure que pido jure no prove de malicio y en lone si sarla

EUGENIO ANT. SIERRA.

Ps 26-3 rls. Panza y Oct 27 de 1817.

En el mismo dia hicimos saver a D. Eugenio Antonio Sierra a Dn. Elleoria Ribas damos fee.

SAUSA. CEVALLOS

Seguidamente lo verificamos a Dn. Juan Malagoza, decimas corredero damas fee.

SAUSA. CEVALLOS.

Tasacion de costas causadea en esta diligencias segun lo marrdado y con arregleamente.———

	Reales.
Al sor. Gov-or. pr. diez y siete medias firma y una anos..	56-
Al Sr. Audt. de guerra pr. las mesorias de fora-42-49-54-98-6....	130-
A los poritos estimadores de los tres cientos arganesde tura....	45-
p ca a la Bta—	231,
Suma de la 61a..	231,
A Madama viuda Rivas pr. petietor.....	5-
A Dn. Eug. Sierra pr. sus peticiones y vra. certif-r. al tuva.....	47-

A D. Ramon Villalta y Dr. Fernando Moreno pr. dos ce.... 10-

175 A los testigos ant-a. pr. unas—pr. diez y siete cientos de mas dilig. y testimona del latemto, y notificos.... 122-

Al fuedar para ocupacion.. 16-

Total..... 431-

Son. $ 53,7 reales

Panza. y Oct-re, 29 de 1817.

DOMINGO SAUSA.

En la Plaza de Panzacola a dia de Nviembre de mil ocho cientos diez y siete Yo Dn. Buentura debunil subtent-te, del Regual de la Luna sendador numbrado pr. el tribunal por de esta mis.. .... para dividir entre la herderos la bienes del defunto Dn Gabriel Rivas, habiendo visto y hecos cargo de los inventorios, y tascion de dho biene lo se duado p-r. la parte interesadosdiligencia proveidos y demas contenide en los antos que pasave en mi poder en cuya virtudpara forma la decha particion, haciendo ante todos casas el cuerpo de bienes rec agentes en esa herencia como sigue:

cuerpo de biene

Primeramente se pone por cuerpo de bienes tres mil quinientes ochenta pesos, importa la relacion que presento la viuda del expresado defunto Mari Moreno y se halla a $ 7 de los antos..... ....3580 ps.

Item Quinientos setenta y dos pesos en que fueron vendidos los tres cientos arpanes de tierra qe. se refiere la viuda en la indecado relacion de $ 7, cuya venta consta en los antos, 572 ps.

Ambas pritods junta componen la de quatre milinido cinquentos y dos, ...4152....

Para a la buelta,

imparta de po, de bienes la qe demasden lo, 5152 p No.

Bara del cuerpo bienes.

Dos mil tres cientos sesenta y tres pesos a que ascienda la relacion de gastos que presenta la viuda y constan $ 40 & 41, ... 2363p.

Cuatro cientos veinte y nueve pesos desrls. y mediao a que asciende la compostura de una de las casas de esta herencia como consta, pr. los recivos de ps. 3, 4, 5, y 6 numerados desdal hasta 4, ... 429-2-1|2

Cinquenta y siete pesos y quatro reales importe de la relacion de ps, curapano Dn. Eugenio Ant. Sierra en que muestra la asisten y media cantos que subministri durante la larga enfermedad del defunto Gabriel Rivas, ... 57..4.

Cinquenta y tres pesos, y tres reales a que asciende la tasacion de las costas cansadas en esta dilig-s. segun segun consta
176 en la pa. mandar forzoras, ...6....No... 2904 ps-4rl
total .....1247ps-4rl.

De maera que segun queda demastrado emportando el cuerpo de bienes quatro mil cientos cinquenta y dos pesos de los que cuales dos mil nove cientos quatro y quatro reales que a eltotal de la baja quedan reduciodos a mil dos cientos quarentay siete pesos y quatre reales pa|seprte en la forma ....

A Maria Moreno biuda de Dn. Gabriel de Rivas, descientos cinquenta pesos que ha de haber por resto de la dote segun lo explica la clausula del testamento. .....250—

Nueve cientos noventa y siete pesos y quatro reales que repartidos entre los ocho hijos y nietos herederos que constan en los anots toca a cado unaciento veinte y quatro y quatre pesos cinco y medio real, ...997-4
....1247-4,

En suya virtud ha concluido esta particion entre le viuda y herederos que le mencionan salvoerror u amision fecha utrelto....

nota

Que queda para partio una deuda de la Rl. haciende de tres cientos cinquenta pesos como lo manifesta la relacion AS 7 enter renglones dos vale—

BUENAVENTURA DUBUNIL.

Sor Gobor.

Dn. Buenaventura Dubrenil Subtente. del Regimento de la Luisiana contados judicial nombrado en los antos de la testamentaria al defunto Dn. Gabriel Rivas en le mejor forma que haya lugar en derecho ante V S, digo que presento debidamte. la cuenta de devision y particion de las bienes que han quedado por fallicimint del referido Dn Gabriel Rivas en cuya virtud se servir a V S mandar se de vista a las partes enteresados pa su aprebacion portanto.

A V s suplicole serva provier y mandar hacer como pido con justicia y juro.....

Otro le egualmente suplico a V S se levera tamas en consideracion el traverso de esta cuenta mandando que cada parte me tenale la cantidad que crea justa pido ut supra.

BUENAVENTURA DUBRENIL.

Panza. Nov. 11 de 1817.

Vista a las partes de la cuenta de division y particion.
DOMINGO SAUSA. JOSE CEVALLOS.

En el mismo dia lo hicimos saver a Dn Ma. Moreno, damas fe.
SAUSA. CEVALLOS.

177 Seguidamte. le verificamos en Dn Eug-o. Ant. Sierra y D Juan Malagoza damos fe.
SAUSA. CEVALLOS.

In contenentinos lo verificamos en las herederos de esta subcesion damos fe.....
SAUSA. CEVALLOS.

Sor. Governador subda. de Rl Hac-da.

Da. Maria Moreno viuda de Dn Gabriel de Rivas vecina de esta Plaza Y Dn Eugenio Sierra tutor y curador adlitem de los menores y nosotros los abajo firmados con la atencion que a V S, es devio decimos que haviendo rosdado vista de las devisionas y particiones de la bienes que ban quedade al fallicimiente de su defunta esposa Dn Gabriel de Rivas nos conformamas contodo lo actuado; y no obstante loespuesto—V s se servir a mandar le que mas halla en derecho y per conbeniente sobre esto particular, Panzacola 14 de Noviembre de 1817.

MAMORENO.
por mi esposa Da Paula de Rivas,
JOSE ESTEVAN CARO.

Por mis menores hijos
RAMON VILLALTA.

por mis menores,
FREN-DO, MORENO.

A ruego de Juan Malagosa por no saver escribir,
JOSE TRUELLA.

Panzacola y Nov-bre. 14 de 1817.

Vista; la conformidadde la viuda Da. Maria Moreno al curador de los menores Dn. Eugenio Anto. Sierra y todos los damas herederos y que han subscrito en esta pedimente entreguesele a dha viuda su cuota y la de sus menores hijos como curador adbona de ellos, mediante a la finanza que ofrece de Dn Juan de la Rua, a quien se le haza saber para que lo verfique antes de la entrega; y pr. lo que respecta a los damos menores hagasele saver igualmente a sus padres para que lo verifiquieren persona dega llama y abonado, imediante a que Da. Paula es de major edad enterguesela a su marida su parte quien del mismo mode otorgara el correspondiente recive ofreciendo responder

de ello con su persona y bienes y en cuanto a que la menor Candida Riera tiene curador nombrado por este tribunal, en latestamentaria de su defuntopadre y que este ha dado fianza ipoticaria entreguesele egualmente su parte bajo el correspondiente recive entregandose previamente a Dn. Eugo.
178 Sierra la cantidad que reclama, y esta mandado satisfarcerle en providencia de diez y siete de Octubre pa-p-da. carto igual recivo todo lo que quedacaunido a estas diligencias pa su constancia Archievente estas previo la tasacion de la ultimas costacon inclusiende veinte y cinco pesos que sele tazaran por s trabajo al sub-te, Dn Bentura Dubriel, 30 reales.

MASOT.

DOMINGO SAUSA. JOSE CEVALLOS.

En el mismo hicimos saver a la viuda Da. Maria Moreno damos fee.

SAUSA. CEVALLOS.

saguidamente lo verificamos en Dn Juan Malagosa Y Dn. Eugenio Ant. Sierra damos fe,

SAUSA. CEVALLOS.

In continente y lo verificamos en los demas herederos de esta testamentaria damos fe;

SAUSA. CEVALLOS.

En la mencionada Plaza de Panzacola a quinece de dho dia mes y anos ante S. S. a compareseso Dn Juan de la Rua, de esta vecindaria y commercio y dice que se constituia como desde luego se constituye pr. fiador de Da. Maria Moreno por la cantidad de dos cientos treinta y quatro pesos qe percive de la parte diviseria, de sus dos hijos,

Sebast Caro menores Gabriel y Learnado Rivas y que en su virtud se asi cargo y responsable de la citado suma como dendor consta nientehaciendo a causa agena suya propria a cuya firmesa obligo sus vienes presente y futures dando poder a las justicias de S M, para que a su complim-to, sele apremie en cuyo testimonio hay lo dias etorgo y firmo de que damos fe.

JN. de la RUA.

MA. MORENO.

DOMINGO SAUSA. JOSE CEVALLOS.

Nota.—Que con esta fecho a quedado nula y de ningun valor la presente fianza subministrada por Dn Juan de la Rua. y para que asi conste, lo anotamos de qe damos fe. Panzacola Marzo 22 de 1821.

SEBASTIAN CARO.

Seguidamente ante dho Sr, comparecio Dn Fernando Moreno, de esta vecindario y dixo que se constituia como desde
179 luga se constituye por fiador de Dn Ramon Villalta pr. la cantida. de ciento diez y siete ps trs reales y medio que percive del a parte divisionia de los bienes del defunto Dn Gabriel de Rivas de sus dos menores hijos y sidre y Ramon y que en su virtud se hace cargo y responsable de la citado suma como dender comas amiento haciendo de causa agena suya propia a cuya firmera abligo sus vienes presentos y futuros, y dio poder a las justicias de S M, para que a su cumplimiente se me apremia; en cuyo testimonia hasi lo digo otorgo y firmo con S S a, y nosotros los testigos de assta. de que damos fe;

FERNANDO MORENO,
RAMON VILLALTA,
JOSE VEVALLOS.

DOMINGO SAUSA.

Incontinente ante el expresado S. S. comparecio Dn Ramon Villalta de este vecindorio y dixo que se constituia como desde luego se constituyo por fiador de D Fernando Moreno. por la cantidadde cinto diez y siete pesos tres reales y medio pargavo de la parte divisoria que la corresponde a sus menore hija Ma dolores de la subsecion, del defunto Gabriel de Rivas y que en su virtud se hace cargo y responsable de la citados suma como deuda, cometamenta haciendo de causa agenea suya propia a cuya firmeza obligo sus vienes presentes, y futures, y dio poder a las justicias S M Para queasu cumplimente se la apremie, en cuya testimonia hasi lo divo otorgo y firmo con S. S. a y nosotros los testigos de assta. en que damos fee.

FERNANDO MORENO,
RAMON VILLALTA,
JOSE VEVALLOS.

DOMINGO SAUSA.

Digo Yo Dn Eugenio Antonio Sierra como ha recividos de los testigos de assistencia la suma de cincuenta y siete pesos, cuatro reales per cuenta de la sucesion del defunto Gabriel Rivas segunmandado en providencia de diez y siete de Oct-re. del corrte ano, en los antos de la materia. Panzacola y Nov-re. quince a mil ocho cientos diez y siete.

Son $ 7 ps, 4 rrs.

EUGENIO ANTO. SIERRA.

DOM. SAUSA.

En el mismo dia comparecio antes S Sa. Dn Jose Estaban Caro de esta vecindadia y dixo haver recivido de la subcesion y repartereciente a lasvienes del defunto Gabriel de Rivas la

suma de ciente diez y siete tres y medio rrs. pertenecien-
180 tes a su exposa Da Paula Rivas y pa suconstancia lo firmo con S. S-a. de que damos fee:

por mi esposa Da. Paula de Rivas,

DOMINGO SAUSA. JOSE ESTAVAN CARO.

Enesta mismo acto recivio la viuda Da. Ma Moreno la suma de quatro cientos setenta y siete ps. un real pr. le liquido que le cupoen los monedas de su defunto marido segun consta de la ultimo liquidacion que a presencia de S Sa. y de los demas herederos firmo mismo cantado Dn Bentura Dubrevila todo lo que se dia por entregado a su voluntad y para su contancia, lo firmo de que damos fee.

MA RIVAS,
JOSE VEVALLOS.

DOMINGO SAUSA.

Digo lo Dn Juan Malagoza que he recivido de los testig-s. de assta. ciente diez y siete ps. tres y medio rrs. Ymg-te. de la que le ha corresponde a su menor Candida Riera de los vienes repartidos a la sub-s. del defunto D Gabriel de Rivas como tutor que cuya dho, Menor Panza. quince de Nov-re. de Mil ocho cientos diez y siete.

ARUEGO de Dn JUAN MALAGOZA,
por no saber firmo.

Tasacion de las costas ultimatte causados en estas dilig-s.

	p..real
Al Sor. Gov-or. pr suhones-s.	5..4
Al sub-te. Dn Ventt-a. Duvriel pr. su trabajo	25..
Al deposito	25..4
A los testigos por sus dilig-s.	2..2
Al Tasador, ...	..5
Son, $	56..7 1|2

DOMINGO SAUSA.

Panza. 19 de N-vre. 1817.

Sor Gov-or.

Dn Jose Caro y Dn Juan Malagoza el premir representado por esposa Da Paula Rivas, hija del defunto Gabriel de Rivas y el seg-da. como tutor adlito de Candido Riera nieta del Ya expresado defunta contestando a las vista que se ha servido el tribunal conferimos de las diligencias que se guen por Da Maria Moreno viuda de Gabriel de Rivas ante V S, parecemos y decimos que hemos exeminado contado protefidad las dichas diligencias recivos y cuentas presentados por la viuda en las que no

hallando ninguna de defectur por haber tenido crecidos
181 gastos en la declarado enfermedad de su defunto esposa
y la crecido familia que le quedo sobre sus brozas, sin-
tenar otra recurse que las dosposesienes que su expresare en las
indicadas cuentas y diligencias.

Hasi mismo nos consta que una de las dos posesiones, que se citan, hera un almacen bastante deteriorado y para que judiera subsister en pie le fui precise a la viuda hacer barios composturas; como chimeneas techos, cecinos, etc. y por la que corresponde a los tres cientos arpanes de tierra que se proseda al abalue y benta reumendos a la masa comun supredicha para que de estimado puedan hoerse las partitiones que corresponder a los herederos dejando a la disposicion del tribunal resolber en justicia lo qe. hubiere por conbeniente que dando por contestado la vista que se nos a conferido condha 13 del corriente Panz. 16 de Sept. de 1817.

A ruego de DN JUAN MALAGOZA,
por no saber escribir.
JOSE TRUELLO.

por mi esposa Da Paula de Rivas
JOSE ESTEBAN CARO.

Panzacola y Sept. 17 de 1817.

Antos y vistos; tazzen los los arpanes de tierra perteneciente a est a sucesion, y aquien a remate y pregun, pr esta de dho paraje traslado del testamento otorgado por Gabriel de Rivas y trabajese para los demas providas que corresponde.

HERNANDEZ.
JOSE VEVALLOS.

MASOT.
DOMINGO SAUSA.

En el mismo dia lo hicimos saver a los exponentes damos fe:
DOMGO. SAUSA. CEVALLOS.

Sor Gov-r.

Dn. Jn. de la Rua vecino q, de esta coma. a V con la atencion que deve dice; que por hacer favor y buena obra a constituya fiador de Da. Maria Moreno de Rivas para que sele, entregare la parte correspondiente, a eszmenores hijos procedente de particion y liquidacion echa de la bienes quedada por muerte de su defunto marida perduen tende que viuda lore levaria de la fianza immediamente qe despues de que compare una casa qe le expreso devia de comprar de laqual efectava pero como, cocmo hasta esta fecha no vale de tantono obstante de haver como dos anos que me constitui su fiader por tanto. A, V, Suplica se sirva

mandar y proveer lo verifique en un predicho, termino
182 y de verificarlo que deposite en quienjuzgue el Tral. por
conveniente la parte que en el dia correspond a una de
sus hijos menores pues tengo entiendiveque por muerte de lso
otros resulto de heredera en todo s justicia que con costas pido
jure no preceder de malicia.

JN. de la RUA.

Panz-la. 3 de Sept. de 1819.

Hagase saber a Da Maria Moreno se proporcione a la que esta parte solicita dentre el precios termino de cinco dias apercivida en su defecto a lo que hacienda en derecho.

SUIS
JOSEPH CARO.

CALLAVAS
DOMINGO SAUSA.

En el mismo dia lo hicimes saver a Dn Juan dela Rua Damas fe:

SAUSA. CARO.

El en mismo dia pasamos a la morada de Da. Maria Moreno, y dispues de haverle enoxado del casa antecrete nos dio por repuesta que haviendosele de querido cobre el mismo asunto presento pr su fiador para relevar a Dn Juan de la Rua, a Dn Battasar Centenoen tiempoque posehian esta Plaza, los Estados Unidos y que estara orehija de que se havia verificado como lo esta ha su senter pues ha pag-do, el importe de la escritura, y para que conste lo ponemos por su respuesto de que damos fee.

DOMINGO SAUSA. JOSEPH CARO.

Sor Alcalde Constitucional.

Dn. Jn. de la Rua de estae Com. ante V con el respeto devido dice que en el mes. . . . ppdo de Septe. pues entre [illegible]uvstancialitigando al tral a serverse provear a Da Maria Moreno trada Rua, le relevate de la fianza que por hacerle favor para otorago pa. que perceveese las quetas de sus hijos menores en la firme promesa de que dho Da. Maria comprando una finca como le habia ofrecido comprar por si mismo q larelevaria de la responsabilidad todo lo que no ha verificado, ebrando de mala fe. y abusando, de mi descuido y burlandose de los preceptos del Tra-l. pues de el referido mes de Sept. le esta previnido, se sumpliese a mi solicitar a afreciando deloque huviersse lugar, como consta en el archives del cargo de V por tanto.

A. V. suplico se servir proveer y y mandar se me releve de la fianza, en unprecioy preventivo termino y de no verificado que a

libre mandamiente de exear de la expresado trado viuda travan-
dose, esta en quale quiera de su biene que en justicio Q
183 con costas y costa que juro no pedir sino justicia le
necesario &

JN. de la RUA.

Panza. 17 de Febrero de 1821.

Requirerase por el escrito qe esta parte acuso y escogido unasea este y traigase a la vista para preveher lo qe correspon-da.

de Grand Pre.

LOUIS DAUNOY. SEBASTIAN CARO.

Panzacola 17 de Febrero de 1821.

Hagase subera Da Maria Moreno qe. por segunda vez se mee intima qe aldentre de termino de quinta dia se proporcione a le vantor la fianza qe esta parte solicita hapercionando de lo qe haya lugar en su defecto.

de Grand Pre.

LOUIS DAUNOY. SEBASTIAN CARO.

En el mismo la hicimos sabera Dn Juan de la Rua damos fee.

DAUNEY. CARO.

Seguidam-te. lo verificamos en Da Maria Moreno, damos fe,

DAUNEY. CARO.

Panza. 21 Febrero de 1821.

Sin embargo de qe ha concurrido es este fuzgado Da Ma Moreno con su fiador Dn. Patterar Centino a hecho de levantas la fianza que ha selicitido Dn Juan de la Rua y no admitiendo el verificarlo por el total de ella sino, con el rebijo de lo que tiene subministrado y pagado a su defunto hijo Gabriel de Gabriel de Rivas hagasele saber a da Ma. Moreno calefiquesu propuesta por medio de testigos pededigras pa qe el tribunal en su vista pueda determinaron le que corresponda en justicia.

de Grand Pre.

LOUIS DAUNOY. SEBASTIAN CARO.

El mismo dia lo hicimos saber a Da Ma. Moreno viuda Rivas, damos fee.

DAUNEY. CARO.

Siguadam-te. lo verificamos en Dn Juan de la Rua Damos fee.

DAUNEY. CARO.

Pagare a mi padre ciento y diez y nueve ps. que le devo de mi mantencion testementa y los quales me devo la real a sienda de mi trabajos. Panza. Julio 25 de 1817.

GABRIEL RIVAS.

184 (Observe sele)

He no dado dado a Gabriel en plata -saber,.....p-s...r
Por titulus de su Tierra ..... 19..3
Para Pagar a banas como ..... 43..
Pact go le en seno el parage ..... 2..
doepanes de zapatos ..... 6..3
En plata ..... 7..4
Ps
88..2

Sor. Acalde Constitucional:

Dona, Maria Moreno ante V con el devido vespito expone, que dia: que comotutoro y curador de sus des hijos Gabriel y Learnado de Rivas recivo por tribunal laparte de la lexitimo lescorrespondea su total de dos cientos vein te y seis pesos tres rls. haviende quedado de fiador D Juan de la Rua, y y commodho la Rua se servir V mandar trasmiet la fianza en la persona de Battera Centino que hau me lo tiene ofrecedo bienentendido la que le correspondia mi hijos Learnando gracia y justicia que espero delafrees to fiado de V Panza. 2 de Marza de 1821—

Otre si asi mismo se ha de servir V ordenar se tomo enfermacion y que bajoel devido juram-te, declaron Dn Luis Cayarro, Dn. Eugenio Ant. Sierra y Battera Centino, y segun si oyeron decir a mi Hijo Gabriel havia recivido por mi la parte de su legitima herencia de orden decir esto mismo asi mismo si saber que el referido mi hijo Gabriel permanecir en casa desde el instante qe secasa y que pie asistedo por mi en el largo tiempo de su enfermedad haviendo suplido costeado ataud entierra &,— hallanden aun, pendientey su pagar la asistencia del facultativo teniendo una cuentaabundam-te. de quante llevoekpresado una obligacion devidamenteacompana de dho mi hijos de cientos diez y nueve pesos seis rls. todo lo qualdevira juxtifica nado devide se la parte paterna qe estava a mi cargo; consideradon mativos estas suficiente para que V se sevir mandar se a me le y que de sin valor la fianza jujita a esta cantidad y dar por concluidos esta materia qe .. justicia qe espero &,. Panzacola dha ut supra: 2 Marza de 1821.

MA MORENO.

Panza. 3 de Marza de 1821.

Presente manana a las nueve los testigos qe anemcia y carecian ala misma las diligen—, para proveer le que corresponda—

de Grand Pre.

LUIS DAUNOY. SEBASTIAN CARO.

185 En el mismo lo hicimos saber a Da Maria Moreno. damos fee.

DAUNEY. CARO.

En la Plaza de Panza. a lesdias del mes de marzo de mil ocho cientos veinte y una en vertud de la selicitud antecedente y del decreto qe a ella recago se hiso comparicia Dn Eugnio Anto. Sierra cuidad ano de esta Plaza y profeso de sirugia. testigos presentado por parte de Da Maria Moreno a quien por ante nosotros los testigos de assistencia se le recivio juramento por dho sor en todo forma de decir el qual ofrecio decir berdad en la que supiese y fuese preguntado y se indolo al tenor delas preguntas qe contiene el escrito antecedente dijo qe le consta depositivo la sertidumbre de la qe. se relacion a y seleinterrega por hava bisto y heida el todo a que se le hasen paro engo consepto se a firmo y satisfiseleyda qe ll fue esta su declaracion dizo ser major de adad y lo firmo con su mercer de que damos fee.

de Grand Pre

LOUIS DAUNOY EUGENIO ANT. SIERRA
SEBASTION CARO.

Inconteniente comparecio Dn Luis Garre Cap-n. de Malicias con grado de Ejercito Cabellero de la Militar orden de San Hermenegildo; a quien su merced por seis testigos presentado por Da Maria Moreno, y pre vio el permiso berval del sor Gov-or. de esta Prov-a. se le q havia juramente en la forma militar, bajo el qual ofrecio decir berdad en la qe supiera y fuese preguntado, y siendolo por el tenor particulares, que le enterroga Da Maria Moreno dijo que efectivomente desde el principio de la enfermedad de su hijo Dn Gabriel Rivas de la sosa qe lo cita, en cuya casa permanecio y asentido segun lo indica en su escrito hasta sus ultimos dias; y por lo que misa ala partedo herencia qe sita la Senora, la solo qe tiene presente que antes de de su enfermedad me dijo el miso defunto seguntiene presento a presencia de Dn. Eugenio Savalle havia recivido por parte de herencia, como unos cientos cinquenta pesos que es cuanto puede decir sobre los particulares a qe se contrae el citado escrito I interrogaciones hechas dixo ses mayor de edad

y lo firmo con su mercer y nosotros los testigos de asistencia de qe damos fee.

de Grand Pre

LUIS GAYARRE
SEBASTIAN CARO.

LOUIS DAUNOY.

Panza. 20 Marzo de 1821.

Mediante Haberse calificado por las declaraciones antecedentes de torer seledho Da Maria Moreno viuda Rivas la parte que correspondia de herencia a su hijo Dn Gabriel admit-
186 ese por la mitad de la fianza que tenio dada Dn. Jn de la Rua a Dn. Battera Centena quidando de primero lebre de aquella; todo lo que se anotara al margen del cuaderno en que se hubierse verificado, pa la constancia y estenden los en el corr-te la que ofrendado, yel citado sentano—

de Grand Pre

LUIS DAUNOY. SEBASTIAN CARO.

En la Plaza de Panza. a los beinte y dos dias del mes de Marzo de mil ocho cientos y veinte y uno. Ante el Sor. Alcalde Constitucio nal de esta province comparecio Dn Baltera Senteno en virtud de la antecedente providencias y dijo qe se obligo como desde lugar queda oblegado a respondea por la Da Maria Moreno viuda Rivas, por lacantidad de ciente trece ps. un real y medio mitad de los cientos biente y seis Ps. y tres rl. total cantidad en que se havia obligado Dn. Jn. de la Rua a responde s por la setado Da Maria Moreno, portenecientes a sus des Hijos Dn Gabriel, y Dna. Leonardo y como quiera qe la referida Da Maria caleficado segun conste de la antesedente diligencia tener satisfecho al primera queda obligado salamente a responder por los ciente trese ps. y un real y medio, correspondiente al segunda y para cuya responsabilidad hipotica expresa y senaladamente la casa de su pertenencia No 6 qe. linda por la parte del esta con un salar de Dn Juan Losado y por el Oeste con otro que era de Dn Agustin Valvesde, y pida de anotase en ll cuaderno de hipoticas para su constancia y obligado a su firmesa su persona y bienes presentos y futuros y dio poder a los justicias para que asu cumplimente sele afrenciado en cuya testimonia asi le dijo y ne firmo por nosaber hiselo asu ruego uno de los testigos qe de fueron Dn Domingo Sausa, Sn Jose Caro, y Dn Franco Llopez y de assistencia los qe con migo subscrive n, de Grand Pre,

A ruego de Battera
Sentine por no saber escrver
DOMINGO SAUSA.

Panzacola 22 de Marzo de 1821.

Mediante a qe se a etorgado la presente fianza por Dn Batterra centine por el menor hijo del defunto Gabriel Rivas Leonardo y qe la viuda Da Maria Moreno, a certificado en devidea forma haver satisfecho la parte de heren-a. a su defunto hijo Gabriel, queda desde este nomenta nula y de ningun valor la fianza tenia otorgado el cuidadano de esta Plaza Dn Jn de la Rua y quida vigente le qe ha otorgaddo Dn Batterra Senteno por los cientos trese ps. un real y media a que haciendo del citado menor Learnado Archivese el expediente previo la 187 tasacion de costas qe se satisfares por la citado viuda Da Marit Moreno.

de Grand Pre.

LUIS DAUNOY. SABASTIAN CARO.

En el mismo dia lo hicimos saber a Da Maria Moreno damos fe.

DAUNOY. CARO.

Tasacion de costa cansados ultemamente en esta testamentaria segun le mandado y con arreg-la. a Aranzel.....

A1 Sol Alcalde por sus honorarias setenta RR1... 70,rrl.
A los testigos de asistencia, por todo lo actuado y escrito sententa y nueve rrl.. .. .. 79-rrl.
Sor No. ps,-5rrl, ... 149-

Panzacola 22 de Marzo de 1821.

DOMINGO SAUSA.

Defendants offer, in connection with the authorization to Maria Moreno, to sell the land mentioned, a translation thereof, which document is set out in works and figures as follows: And marked Exhibit No. 14.

Exhibit "14."

Translation from Spanish into English touching estate of Gabriel De Rivas made from protocol A for year 1807, now in control of keeper of public archives of West Florida, and proceedings appearing closed on 22nd March, 1821.

In the town of Pensacola on the 7th day of January, 1773, before me the present qualified notary of war and the sufficient number of witnesses, appeared Gabriel De Rivas, and said that having entered into marriage agreement with Maria Moreno, daughter of Francisco, already deceased, and Lorenso Macebo, which for cause of the said Gabriel De Rivas being in the service of his majesty (whom God preserve) he has not to the present time been able to carry out, although he has taken

suitable steps therefore from which he hopes results to contract said espousals.

The said Maria Moreno deeming it convenient in company with her mother to go to Havana, and they not having necessary subsistence in said Capitol, I have resolved by way of help, to make her a donation and so that she may enjoy the same as proper owner without responsibility nor debts contracted by her husband or mother in second nuptials,
188 Domingo De Maurico, nor those who henceforth of these they may contract and so that always the said referred Maria Mareno be owner "Ystopica", with power in case of sickness to will as she may deed proper.

I give her in the most due form the property and money following:

1st. Six hundred dollars in hard silver, also two pairs of silver buckles, also two pairs "sarcillos" of gold, two finger gold rings, also bracelets french stone also two pairs of hooks belonging to the bracelets, also a reliquary with chain all silver and a collar for the neck with small bird, said collar garnished with garnets and the bird with french stones; four silk dresses complete, eight dresses of "sarasa", six pairs of petticoats, white, six of stockings, four pairs of shoes, two dozen chemise, one and half handkerchiefs four capes, two silk petticoats, twelve sheets, six pillows, three mattresses, two caldron, two small trap kettles, and chocolate pot, one mortar, a "below," one dozen chairs, six dozen plates, one of "tasos" tureen and corresponding dishes, one glass caster, one bedstead with bar and four blankets with bedspreads of "sarasa" foot-rug with bed, two looking glasses, (here a line is left out by translator as being so indistinct that he cannot make out the articles) as follows: "of the value of 20 dollars at which they were purchased, two pots of (translator cannot make out what), one pair hand iron and tongs, other various things corresponding to the adornment of a woman. All of which articles, I the said Gabriel Rivas grant and make donation in general, to use to the named my future wife, Maria Moreno, so that she may use and enjoy the same as she may deem proper and under the only condition that in no case and occurrence is the said property to be responsible to any happening to her said mother and father-in-law, as only in such case will I claim such property, and will ask as owner thereof, and to the end that she obtain and make use of it the said Maria Moreno, and as being legal and true this donation and the clauses therein contained, I sign it in Pensacola in the presence of witnesses who are Du Manuel Estena, Captain of the Regiment of Infantry of Spain, Du Inan Pardo Alfura and Diego Mallorca and of the present notary of war, qualified

for said place. Gabriel De Rivas, Inan Parks Alfiera, Diego Mallorea, Manuel De Estena.

It conforms with the original that exists in the trunk of the papers of Francisco De La Rua, notary, that was of this
189 place, to which I refer and at request of Maria Moreno, I give these presents in Pensacola on 15th July, 1807.

VISTS FOLCH.

Witnesses:
PEMONS GARCIA ADERO,
MILLAN CARRERA.

Received from the widow, Madam Rivas, the sum of two hundred and nineteen dollars and two bits, amount of lumber, nails and hauls for repairs I made to her house and kitchen, being her possession and property, and that it may appear I give her this for her safety at Pensacola on 11 November, 1811.

CARLOS SIERRA.

$219 & 2 bits. No. 1.

Received from Madam Rivas one hundred and ten dollars for eleven thousand shingles at ten dollars a thousand, Pensacola 11 November, 1812.

WM. LARNAGAN.

$110. No. 2.

Received from Madam Rivas seventy one dollars and a half for value of two hundred boards of ½ inch and thirty of (translator can't make out) which she received from Dn Millan De La Carrera, Pensacola 21 November 1811.

DIEGO DE SALASAN.

$71 & ½. No. 3.

Account of Mrs. Rivas, viz:

One thousand brick for the chimney of the kitchen of her house	15.00
For building	9.00
4 barrels of lime at $1.25	5.00
	$29.00

Received the amount expended in this account and that it may appear I sign in Pensacola on 11 November, 1812.

THOMAS BOBE.

No. 4.

Statement which I, Ma Moreno y Rivas, make of the property left by my deceased husband as appears by the will, of

which part of them have been sold—also of what remained at his death, to-wit:

Sold to Du Franco Bonad a house belonging to the estate as appears by the deed that remains in this government at the price of $2080.00 dollars. Also another of said estate to Dn Edward Tounes $1500 dollars, total $3580 dollars.

190 There remains belonging to the estate at the place called Bayou Tejar three hundred arpents of land that were granted to me by this government, also a debt of three hundred and fifty that I felicitated to the building of the fence of the district of this place, and which has not been paid up to date.

There were expended in the repairs of the last house sold, as shown by the receipts No. 1 to 4 in effective silver $429 & 2 bits.

Pensacola 16 August, 1811. MA MORENO.

I the undersigned to say that I have received from Juan Forbes & Co. the sum of one hundred and sixty dollars in merchandise, which sum I obligate myself to pay monthly ten hard dollars until the full payment dating from this date, and so that it may appear I give this impression of two witnesses.

Pensacola 10 August, 1806.

Witnesses:
ANDREW FOWLER,
JUAN INERARITY.

No. 32.

We the ..... witnesses have received from the widow Rivas Ma Moreno the sum of eight dollars and one and a half bit as her share of costs which she has to pay in the suit with her sister Josefa, and so that it may appear we give this in Pensacola on 20 June 1809.

ANASTO MOM DE DEA,
DOMO SAUSA.

$8 & 1-12 bits. No. 31.

Received from the widow Rivas forty dollars for my services at sale at auction that took place at her house, and according to the condition between her and the lawyer. Signed 13 Feby. 1810.

F. ORSO.

No. 30.

I, Marcus Riera a citizen of this place acknowledged myself satisfied to the amount noted on the back, five hundred dollars for (translator can't make out what) and the interest for all the time that it has run and to date and so that it may

appear I give this which I sign with a cross in the presence of witness Dn. Marin De Madrid & Juan Bta. Montero .....
Pensacola 4 August, 1810.

MARK x MARCUS RIERA.

$500.

No. 29.

Witness:
MARIN DE MADRID.
JUAN BTA. MONTERO.

191 Note by translator. The annotation on the back of this receipt is as follows:

By this I obligate myself to pay the sum of five hundred dollars in silver hard dollars to my son-in-law Marcus Riera, who has loaned the same to me and with interest of $5 per month, and I obligate myself to the payment with my property had and to be had so that it may appear and serve him with surety I sign in Pensacola on 1st Jan'y, 1806.

GABRIEL DE RIVAS.

Note by translator. Signature crossed.

Received from Dn. Noremio I increase the sum of forty dollars which he has loaned me for my (translator can't make out what) and which I promise to pay to his order and so that it may appear I give this in Hav'a on 28 November, 1809.

ANTONIO RIVAS.

$50 $10 interest.

No. 28

I, Francisco Bonad, do say that I have received from Dn Antonio Rivas for passage from Havana to Pensacola and so that it may appear I give this in Pensacola on 10 of month of year 1810.

FRANCO BONAD.

No. 27.

I have received from A. Rivas forty dollars amount for his passage to the Havana on board the brig "Minerva" Pensacola July 16, 1810. Also $10,000 more.

$50.00. VINCENTO DO OORDONGOAITI.

No. 26.

I will pay to Dn. Franco Bonad two bottles of oil and two dollars of segars making three dollars and four bits.

RIVAS.

No. 25.

I will pay to Dn Franco Bonad eight dollars and five bits.
$8.00.

MA MORENO.

No. 24.

I will pay to Dn Francisco Bonad twelve dollars for a barrel of garlick.
$12.00

MA MORENO.

No. 23.

I will pay to Francisco Bonad sixty-five dollars.
$65.00.

MA MORENO.

No. 22.

192 I will pay to Dn. Francisco Bonad forty-seven dollars and four bits.

MARIA MORENO.

$ 47 & 4 bits.

No. 21.

I will pay to Mrs. Col the sum of sixty-seven dollars and one bit and a half which I will pay when Mr. Franco Bonad pays me, and that it may appear I sign in Pensacola 2 November, 1810.

MARIA MORENO.

$67.000.

No. 20.

Mr. Bonad you will do me the favor to pay to Mr. Orns this my receipt, favor which I expect from you.

MARIA MORENO.

Received the amount of the receipt.

LOUIS ARNANLD.

I, Gabriel De Rivas, citizen and of the commerce of this place do say that by this my due bill I will pay to Dn. (can't make out what name), Savardo the sum of one hundred and seventy-three dollars and four bits when I receive the money from the "Plaza" and so that it may appear and at all times have its due effect, I sign this in Pensacola on 27 Oct. 1802, and for not knowing how to sign it it is signed by my wife.

MARIA MORENO.

Witness:
ANTONIO MONTERO.

$173, 4 bits.
19, 2 bits for the three receipts of the notaries.

$192, 6 bits for the said Rivas.

No. 19.

Received from my sister Ma Moreno the sum of 114 hard dollars in payment of a receipt which yet remains in the archives in the auditor of war in this place.
Pensacola 26 Jan'y. 1811.
$114.00.

ORNEGO ORNITIA,
ANTONIO LONGINOS,
Who not knowing how to write,
FRANCO MORENO.

No. 18.

Receipt No. 17 translator can not well make out except that it is an account due to Ramon Santiago by Mr. Rivas for three items amounting to ten dollars and six bits.

No. 17.

193 Received from Madam Rivas the sum of fifty dollars and six bits amount for several articles furnished from my house, and so that at all times it may appear and be of benefit to her I give this in Pensacola on 27 June, 1808.
$50. 6 bits.

RAMON SANTIAGO.

No. 16.

Madam Rivas.
To John Forbes & Co., Dr.

For 1 hat $2. item $1	$3.00
" 2 yds. Bersopson at 15	3.06
" 2 Blankets at $4	8.00
" 3 yds. Cambric at 7.2	2.05
" 2 pair hose at 11.2	2.06
" 1 cotton shawl	2.04
	22.05
" 1 package ink powder	3
	23.00
" 1 piece of irish linen	15.04
	38.04

MARIA MORENO.

No. 15.

Received from Dn Engo Sierra ten dollars and a half, amount of three pieces of ribbon.

PEDRO SANS.

Pensacola 6 May 1808.
$10 & 1 | 2.

No. 14.

PENSACOLA 6 *August*, 1810.

Due by Madam Rivas.
to Juan Rismundo to-wit:
One barrel of lard 237 lbs. at $35.00.
Rec'd payment.

JUAN RISMUNDO.
PENSACOLA, *August* 4, 1810.

Due by Madam Rivas.
to Domgo Torry, to-wit:

1 pair black hose	$ 2.4 bits.
1 piece linen	45.
Thread.....	4
1 | 1 barrel rice.....	5.6 bits.
	$56.6

Rec'd payment,

JUAN RISMUNDO.

No. 12.

194 I will pay to the order of Juan Rismundo the sum of one hundred and twenty-two dollars and seven bits in the month of January next for value received from the same.

MARIA MORENO.

Pensacola, 7 Oct. 1810.
$122 & 7 bits.

No. 11.

Received from Madam Rivas the sum of twenty-four dollars and four bits for various articles which I furnished her during the sickness of her husband.

PEDRO SANS.

Pensacola 6 May, 1808.

No. 10.

Received of Mrs. Maria Rivas the sum of eighty-two dollars and four and a half bits amount for various articles taken in the store for the subsistence of my children and for her safety. I give her this in Pensacola on 5 August, 1810.

PEDRO SANS.

$82 and 4 1-2 bits.

No. 9.

Received from Madam Rivas the sum of one dollar for grave of her husband. Pensacola, 8 May, 1808.

ALONZO GATTIERAS.

No. 8.

Received from Dn. Eugenio Sierra the sum of two dollars and one bit for eight wax candles and yds. of ribbon. Pensacola, May 9, 1808.

LOUIS ARNANLD.

$2 and one bit.

No. 7.

PENSACOLA, 29 *April*, 1808.

Received from Mrs. Maria Moreno seven dollars, six being for six masses that I celebrated for the intention of Mr. Gabriel Rivas for different ptomises [promises], one to the passing of Jesus, one to Our Lady the Virgin Mary, one to Our Lady of the Rosary, one to Our Lady of Carmen, one to Saint Rosalia, and one to the souls of purgatory; and another mass that was ordered to be said by the said Rivas for his agony. And so that it may appear, I sign.

SEBASTIAN VIVES.

No. 6.

PENSACOLA, 30 *April*, 1808.

Received from Maria Moreno, widow of Gabriel Rivas, three dollars, being alms of three masses, which are those of
195 the soul and which I will apply for her deceased husband and so that it may appear I sign date ut supra.

SEBASTIAN TORES DE VIVES.

No. 5.

I have received from Eugenio Sierra the sum of thirty bits, which he paid me for sixty candles.

$3 and six bits. JOSE SAPIOLA.

No. 2.

Antonio Mayol.

I, the undersigned, do say that I have received from Dn. Eugenio Sierra eight dollars for a coffin for the deceased Gabriel Rivas.

Pensacola, 2 May, 1808. FRANCO SOMORA.

No. 2.

Received from Dn. Eugenio Sierra twenty-eight dollars and six bits amount of the burial of Gabriel de Rivas, and so that it may appear I sign Pensacola, 9 May, 1808.

$28 and 6 bits. I. THOMAS.

No. 1.

State which I, Maria Moreno and Rivas, widow of Gabriel, make of the expenses incurred in nutriment of my children, as also for debts which I have paid for my deceased husband since his death, which was on the 28th of April, 1808, as appears *from the receipts which are numbered, to-wit:*

Received from the widow Rivas for seven ells of check at rate of six bits per ell this 8 May, 1808.

$5 and 2 bits. JOSE SAPIOLA.

No. 3.

	Dolls.	Bits.	
For the burial masses of the soul as appears from the receipts from 1 to 8, total	58	7	
Paid to the auditor of war to open the will of my deceased husband	22	4	
Paid to Dn. Pedro Sans, as shown per receipt No. 9, in silver	82	4	1-2
Paid to same as per receipt No. 10 in silver	24	4	
Paid to Juan Rismundo in silver as per receipt No. 11	122	7	
Paid to same as per receipt No. 12	53	6	
Paid to same as per receipt No. 13	35	0	
196 Paid to Dn. Pedro Sans as appear per receipt No. 14	10	0	
Paid to the house of Forbes in silver as per receipt No. 15	38	4	
Paid to Ramon Santiago in silver as per receipt No. 16	50	6	
Paid to same in silver as per receipt No. 18	114	6	
Paid to Dn. Felix Salvador in silver as per receipt (No. 19)	192	6	
Paid to Louis Arnanld in silver as per receipt No. 20	67	0	
Paid to Franco Bonad in silver as per receipt No. 21	47		
Paid to same as per receipt No. 22	65		
Paid to same as per receipt No. 23	12		
Paid to same as per receipt No. 25	3		
Paid to Dn. Vincente Ordoigati for passage of my dec'd son, Antonio Rivas, to Havana for the purpose of collecting the money of the fence for the district of this place during the time of Dn. Vincente F.—per receipt No. 26	50		

Paid to Dn Franco Bonad for the passage from Havana to this place of my deceased son, as appears per receipt No. 27	40	
Paid to D. Jeronimo in silver as per receipt No. 28	50	
Paid Marcus Riera in silver as appear per receipt 29	500	
Paid to Jose Orso as per receipt No. 30	40	
Paid to the attestant witnesses as per receipt No. 31	8	1
Paid to Forbes and Co. in silver as per recpt. No. 32	166	
For the mourning was expended	150	
Rec'd from my deceased son, Antonio Rivas, from his pay in silver as appears from the ministry of the Royal Exchequer, and which was consumed in nutriment of my children and other expenses which originate in a house with a family	339	
	$2,363	0 1-2

These twenty-three hundred and sixty-three dollars and 1-2 bit have been converted in debts paid, the nutriment of eight children which were left me by my deceased husband
197 at his death and other occurrences of the family as will appear by vouchers which accompany this statement, less the mourning, not recollecting from whom bought, as also the twenty-two dollars and two bits of the auditor of war for which I have no receipt for the amount.

And so that it may appear, I sign it in Pensacola on 16 of August, 1817. MA. MORENO.

Mr. Governor and Subdelegate of the Royal Exchequer:

Maria Moreno, widow of Gabriel de Rivas, with what attention which to your Ex. is due, saith that having the accounts of the succession adjusted, as appears by the.....statements which I duly presented, as also my articles of marriage, so as to clear the succession and make the distributions which in justice may belong to the minors. Therefore to your Ex. asks that touching the matter you may order what you may deem most convenient. Grace which I expect to receive from the goodness and benignity of your Ex.

Pensacola, August 18, 1817. MARIA MORENO.

PENSACOLA, *August* 18, 1817.

Let it proceed with the documents that accompany it to the assessor general and — auditor of war. MASOT.

Give copy of the accounts that are presented by the widow to the heirs of lawful age, and to the curator of the minors so that in view therefore they may allege what may appear to them.

MASOT, HERNANDEZ,
DOMINGO SAUSA. JOS CEVALLOS.

On the same day we made it known to the widow, Maria Moreno.

In faith whereof:
SAUSA. CAVALLOS.

On the same day we made it known to Dn. Eugenio Antonio Sierra, and furnished him with the copy that ordered as the curator for the minors.

In faith whereof:
SAUSA. CAVALLOS.

His Ex. the Governor:

Dn. Eugenio Ant'o Sierra before your Ex. with due respect saith that for the reason of being very much occupied in attending to the sick of the vicinity, he [is] compelled to
198 ask for the Tribunal to furnish copy of the proceedings of the estate of Gabriel de Rivas to the heirs of lawful age, suspending that furnished him, and to be concluded after they others on their part have furnished theirs. Meanwhile he will be able in some way to disengage himself, and to comply with what the tribunal has ordered.

Therefore to your Ex. asks that it may please order to be done as he prays. Grace and justice which he expects from the known justice of your Excellency. Pensacola, 27 August, 1817.

As he asks. ENGENIO ANT'O SIERRA.

Pensacola, August 27, 1817.

DOMINGO SAUSA. JOSE CEVALLOS.

His Ex. the Governor:

Ramon Villalta and Dn. Fernando Moreno respecting our minor children and grandchildren, heirs of the deceased Gabriel Rivas, answering to the copy which it has pleased your Ex. to order as confer at petition had in the month of August last part, by Mrs. Maria Moreno, widow de Rivas, with a view of adjusting the accounts of the estate, and so as to clear the estate, as we understand, of ten years standing and make the petition of the property of said deceased as better it may correspond. Say that having examined with due care the papers

presented by them over, we fail to find will, inventory, appraisement, sales, liquidation, partition, nor any other provisions showing the object of the writing. Folio 42, for cause of which, and it is not being proper to form judgment nor being able to ascertain anything about the receipts, allegations and other papers presented by said widow, nor about the answer of Dn. Eugenio Sierra, to whom was referred the copy—.

We beg your Ex. to please decree an answer which according to justice may be required, that we may not be prejudiced by costs caused or to be incurred by this proceeding, and which not to incur them we have not moved because our scant means by reason of the poor condition of the country would not permit us to satisfy them.

We swear that we do not proceed from malice, and to what it is necessary further to swear.

FERNANDO MORENO,
RAMON VALLILTA.

PENSACOLA, *Sept.*, 1817.

Let the reference continue with the curator.

DOMINGO SAUSA. JOSE CEVALLOS.

199 On the same day we made it known to Dn. Fernando Moreno.

In faith whereof:

SAUSA. CEVALLOS.

On the same day we made it known to the curator, Eugenio Ant'o Sierra.

In faith whereof:

SAUSA. CEVALLOS.

To His Ex. the Governor:

Mr. Eugenio Ant'o Sierra, testamentary executor of Gabriel de Rivas, deceased, to your Excellency with due respect says:

That having seen the accounts presented by the widow Rivas, it appears to him that they are in conformity with the heavy expenses that it cannot be denied she has always incurred with her numerous family, some of whom, on many occasions, almost always, were sick.

That it has been necessary to make several repairs, chimneys, etc., to the house, inasmuch as when bought it was only an old store, and although they have tried to repair it on various occasions, they have never been able to alter its bad construction, that which it had in the beginning, notwithstanding the expenses they have incurred.

That at the death of the said Rivas there was no other property than the two houses, for his prolonged sickness caused the exhaustion of all and whatever means they had been able to accumulate by the keeping of a store, so much so that, if my memory serves me right, the clothes to dress deceased were given by a charitable person. Which reasons it was thought were sufficient for overlooking and avoiding the cost of the inventory and appraisement of the two houses, the only property there was. That of the payments made I notice not to have been paid, only the physician who attended the deceased. I also notice that a copy of the will was not taken out, and which ought to accompany the proceedings and as to what refers to the three hundred arpents of land, they should be valued and sold to add the proceeds to the common fund and make partition to the minors and to secure to everyone what may correspond.

It being at the wise authority of the tribunal to decree what according to justice it may deem proper. I have answered the proceedings that were served upon me of the date 9th instant.

Pensacola, September 13, 1817.

EUGENIO ANT'O SIERRA.

200 PENSACOLA, *Sept.* 13, 1817.

Serve notifications to the other heirs.

DOMINGO SAUSA JOSE CEVALLOS.

On the same day we made it known to Dn. Eugenio Ant'o Sierra.

In faith whereof:

SAUSA. CEVALLOS.

Immediately thereafter we made it known to Dn. Fernando Moreno and Ramon Vallilta.

In faith whereof:

SAUSA. CEVALLOS.

On the same day we turned over the proceedings to Mr. Jose E. Caro.

In faith whereof:

SAUSA. CEVALLOS.

Immediately thereafter we did the same thing to Mr. Juan Malagosa.

In faith whereof:

SAUSA. CEVALLOS.

Translator's Note.

See order of 17 September, 1817, for valuation of land and sale thereof towards the latter part of this translation at page..

Mr. Eugenio Antonio Sierra, tèstamentary executor of Gabriel Rivas, deceased, and as of right he may be entitled to, before your Excellency says, that it having been ordered by the tribunal by decree of 17th instant to value the arpents of land belonging to this estate, to sell them at public outery, etc., your Excellency will please order that by the same tribunal two appraisers be appointed to assess the value of said arpents of land, and this being done, that what esle [else] is ordered be carried out. All of which to be done he asks in justice, swears, etc.

EUGENIO ANT'O SIERRA.

Let there be appointed appraisers in the act of notification as it is ordered.

DOMINGO SAUSA JOSE CEVALLOS.

On the same day we made it known to Eugenio Ant'o Sierra as curator of the minors of this estate, and he, as well as the widow, Mr. Juan Malagosa and Mr. Jose Caro, and that
201 they named on their part as appraisers to appraise Mr. Franco Bonad and Mr. Enrique Mitchlet, who being informed thereof at the time, accepted the appointment, were sworn fidelity, and signed.

FRANCO BONAD, ENRIQUE MICHELET,
DOMINGO SAUSA. JOSE CEVALLOS.

On the same day in this office Mr. Ramon Vallilta and Mr. Fernando Moreno, appears on behalf of the heirs their children, and said that they named on their part Mr. Carlos Levallo, who being also present said he accepted and did accept the appointment.....fidelity, and signed, to which we certify.

DOMINGO SAUSA JOSE CEVALLOS.

In the City of Pensacola, on the 6th Oct., 1817, appeared in this office Mr. Franco Bonad, Mr. Enrique Mitchelet, and Mr. Carlos Levallo, citizens of this place, and unanimously said that they ought to value and valued the piece of land that by the interested parties they were named, have accepted and swore with fidelity to value, and in virtue whereof they ought to value it and did value the same at two hundred dollars for the whole, and that it may appear they signed these presents. To which we give faith.

CARLOS LEVALLO,
FRANCO BONAD, ENRIQUE MICHELET,
DOMINGO SAUSA. JOSE CEVALLOS.

PENSACOLA, *October* 17, 1817.

Let the valued land be sold at public outcry, and the time ordered and give notice to the other heirs of this proceeding and all done let it appear.

MASOT, HERNANDEZ,
DOMINGO SAUSA. JOSE CEVALLOS.

On the same day we made it known to the interested parties and showed it to Mr. Juan Malagosa and to Mr. Jose Caro. We certify.

SAUSA. CEVALLOS.

To His Excellency the Governor:

Mr. Jose Caro and Mr. Juan Malagosa, the first for his wife Mrs. Paula Rivas, and the second as tutor of Candita Riera, daughter and granddaughter of Gabriel de Rivas, deceased, in the proceedings that are being had on the petition of the widow, and the testamentary executor, Mr. Eugenio Sierra.

Before your Excellency and as of right, and that it may
202 appear, say, that the account presented by the widow, Mrs. Maria Moreno, with its vouchers, we do not doubt, for she was left with a large family, and all, or most of all of them of tender years, for which reason they must have caused her great expense, and as to what refers to the arpents of land as to proceedings to the valuation and sale, uniting the proceeds to the principal fund, so that if the tribunal deems it proper, there be given to the parties what they are entitled to, being according to justice, we solicit and swear, etc.

For my wife Mrs. Paula Rivas:
JOSE ESTEVAN CARO.

At the request of Juan Malagosa for not knowing how to write:

JOSE TRUELLO.

In the name of the Almighty God who exists without beginning, and who reigns without end, Amen. Know all whom this testament and last will shall see, that I, Gabriel de Rivas, a citizen of this place, native of the City of Seville, legitimate son of Antonio and Flora del Caroo, natives and citizens of said city, and whom I do not know if they are alive, not having heard from them in several years.

Being sick in bed, with all my senses, memory and understanding, such as God Our Master has been pleased to grant me, believing as I firmly believe in the high and supreme mystery of the Holy Trinity, Father, Son and Holy Ghost, three persons really distinct, but making but one, and in the incarna-

tion of the Verb made man for our salvation, in which faith and belief I have lived and intend to live until death, fearing death and its uncertain hour as it is natural to all; knowing that my time must come I want to make my will, and for better guidance I call upon my advocate, upon the Sovereign Queen of the Angels, Holy Mary, Mother of God and Our Lady, and pray for her that she interced [intercede] for me with her precious Son, and put my soul in way for salvation with which petition and divine intercession, I ordain it as follows, to-wit:

First. I recommend my soul to the same God and Master who created it and redeemed it with and at the price and infinite value of His precious blood and death.

My body I give to the earth of which it was formed and that burial be given me in the graveyard of the faithful in that manner and form that my Creator may order, at whose pleasure I leave the balance of my funeral, such being my will. Also I order that there be said the three masses for the soul for the repos of mine and that there be given as charity for once two bits to each one of the forced mandates, and by which I with-
203 draw them from my property, as being such my will.

Also I declare to be married according to the rites of our Holy Church Catholic, Apostolic and Roman, by which marriage with Maria Moreno, I have has [had] seven children, named Antonio, Maria Josefa, Paula, Juanna, Gabriel, Aguela and Leonardo Rivas, and I declare it that it may appear.

Also I declare as my property a house in which I live with my family, an adjoining house actually occupied by Pablo Genanpera, and three hundred arpents of land situated outside of this place.

Also I declare that there is due me several sums of money, as well by the King or his Royal Exechequer as by different individuals and which I request my executro [executor] to collect, and to that affect [effect] to do whatever may be necessary.

Also, I declare to owe to several persons distinct amounts which appear from my obligations or receipts, and ask my executor to pay them so soon as is collected what is due me, having a perfect knowledge thereof from the fact of having signed for me.

Also, I name as curator ad litem of my minor children, Mr. Eugenio Sierra, chief practitioner of the Royal Hospital at this place, which I so declare as being my will.

Also, I name as my executor and holder of property my beloved wife, Maria Moreno, relieving her from all bond, so that by herself and without intervention of law, she proceed to carry out in all parts this my last will.

Also, I declare, institute and name as my only and universal

heirs my above referred children to all the property that may belong to me after satisfying my debts and the six hundred dollars of the dower of my referred wife, so that with the blessing of God and mine, they possess and inherit them by equal parts, such being my will.

Also, I declare that of the six hundred dollars that I am responsible for the dower of my wife, she has received three hundred and fifty dollars in a negro named Franc or Francisco, so that it may appear.

And I revoke and amend and give as null and cancelled whatever other wills or codicils which before this one I may have made in writing or verbally, and which I want to have no effect nor walidity [validity] in law or out of law, saying [saving] and excepting this one which I now execute in that manner and form as to right may be best.

In testimony of which this will and testament is dated in the City of Pensacola on the twenty-seventh of Septem-
204 ber, February, eighteen hundred and seven, being witnessed [by] Mr. Mattias Cervera Enrique of the Regiment of Louisiana, Mr. Jose Garcia Capitilla, Mr. Bernardo Molma, signing at my request, Mr. Jose Maria de la Pena, Matias Cervera, Bernardo Molma, Jose Garcia Capetillo.

It is in conformity with the original will that remains filed in the corresponding book and by virtue of an order this was taken so as to appear to the proceedings of the estate of said Rivas, Dec'd. Pensacola, seventh Oct., one thousand eight hundred and seventeen.

Dollars erased not to be used. DOMINGO SAUSA.

Pensacola, October 17, 1817.

S.....

As agreed by those interested in the property of Gabriel Rivas, dec'd, it is approved what as of right ought to be approved, the account and sworn statement that appears and is established and for which greater validity and force the judicial authority interferes by this decree. Therefore let the account of division and partition of said property conforming to will of Rivas and of what appears by proceedings, be made and presented by all for due approval and assurance to the minors of their quota after....the sale of the three hundred arpents of land, which will be sold on Monday, twentieth instant, notices being posted in the customary places as notice to the public.

Asst. 16 bits.

MASOT, HERNANDEZ,
DOMINGO SAUSA. JOSE CEVALLOS.

On the same day we made it known to the widow Rivas In faith whereof:

SAUSA. CEVALLOS.

Immediately thereafter we made it known to the executor and curator. In faith whereof:

SAUSA. CEVALLOS.

Dr. Santiago Coleman, presbyter, vicar and priest of the parochial Church of St. Michaels of Pensacola:

Certify that in the book of deaths of this parish, at age [page] 98, in an entry the tenor of which is as follows: In the town of Pensacola, on the twenty-ninth of April, 1808, I, Dn. Santiago Coleman, priest and vicar of the paroquial
205 Church of St. Michaels of said place, gave interment in the burial ground thereof to Gabriel de Rivas, a citizen of said place, legitimate son of Ant'o and Florentina Caroo, native of Seville, province of Andalusia, married, age fifty-four years, who died on the 28th day of said month, he having made a will and received the Holy Sacraments, and that it may appear I sign this.

SANTIAGO COLEMAN.

It agrees with the original entry contained in said book, to which I have had reference, and so that it may appear, on application of party, I give the foregoing in Pensacola on 8 of Oct., 1817.

SANT'O COLEMAN.

Dn. Eugenio Antonio Sierra in the proceedings of the estate of Gabriel de Rivas, testamentary executor of said estate, appointed according to law, may be *be* required before your Excellency says: that enclosed he accompanies the certificate of death of the said Rivas so that your Ex. may have it as presented and order that it may be united to the proceedings of said estate for the purpose and to the end that may be said, to do which according to justice is what I ask, swear, etc.

EUGENIO ANT'O SIERRA.

Pensacola, Oct. 15, 1817.

The certificate of the death of Gabriel being presented let it be untied [united] to the proceedings of this estate.

DOMINGO SAUSA. JOSE CEVALLOS.

Account of treatment and medicine furnished to Gabriel de Rivas during his prolonged sickness, September 3, 1807:

For 4 pounds Digestivo Animado at 20 bits a lb..... $10.00
For 1 1-2 lbs. quina 6.00

For 8 ounces balm corbolica, at 2 bits ounce 2.00
For 6 ounces tincture mirra at 2 bits 1.40
For daily visits and cures twice a day during the last stages of the lancing of the tumor until the 28th of April, 1808, when he died, without charging for the visits extraordinary, nor for the daily, and deducting more than 2-3 out of consideration for the widow 38.00

$57.40

Pensacola, 2 Oct., 1817. EUGENIO ANT'O SIERRA.

To His Ex. the Governor:

Dn. Eugenio Ant'o Sierra, testamentary executor of Gabriel de Rivas to your Excellency with due respect says
206 that enclosed he accompanies the account for medical attendance to the said Rivas, which, owing to the great scarcity of money that has been and the estate not being closed, he had not presented for payment. Therefore he begs that your Excellency will order it received and united to the proceedings of the estate, and also that it be paid him out of the common fund deposited at the time of the payment of costs of the said estate, the sum of fifty-seven dollars and four bits, the amount of the account. Favor and justice which he expects of the known justice of your Ex.

EUGENIO ANT'O SIERRA.

Pensacola, Oct. 7, 1817.

Referred to the auditor of war. MASOT.
Pensacola, Oct. 8, 1817.

The within account being received, serve copy to the widow and heirs that they to answer to be signed by them at the time of notice say whether they are willing.

MASOT, HERNANDEZ,
DOMINGO SAUSA. JOSE CEVALLOS.

On the same day we made it known to Dn. Eugenio Sierra. In faith whereof:

SAUSA. CAVALLOS.

I am willing. I am willing.
MARIA MORENO. For my wife, Da. Paula de Rivas. JOSE CARO.

I am willing as executor and tutor of Candita Riera and not knowing how to write, this is signed at my request by the sub-

lieutenant en Jose Travella. At request of Dn. Juan Malagosa:

JOSE TUELLO.

I am willing. FERNANDO MORENO.

I am willing. RAMON VALLILTA.

Pensacola, Oct. 17, 1817.

It appearing that all the interested parties in the estate of Gabriel de Rivas are willing to the allowance of the account presented by the surgeon, Dn. Eugenio Ant'o Sierra, let it be taxed at once and let it appear in the account of division and united in continuation.

Costs two dollars.

MASOT. HERNANDEZ.

DOMINGO SAUSA.

207 Immediately we made it known to the heirs Dn. Ramon Vilillata, Dn. Fernando Moreno, Dn. Gabriel Rivas, Dn. Juan Malagosa and Dn. Jose Caro. In faith whereof.

DOMINGO SAUSA. CEVALLOS.

In the City of Pensacola, on the 20th of Oct. 1817, in the Audience Chamber, being present Mr. Joseph Masot, Military and Political Commandant of this province, associated with the Auditor of War and Assessor General thereof with a view of carrying out the sale that was ordered of the three hundred arpents of land belonging to the estate of Gabriel Rivas deceased, which after the previous calls that were given with the drum according to custom were offered at public outcry by Joseph Cortez, he announcing clearly and distinctly the piece of land that was sold and exhibiting the figurative plan, and the persons attending the sale being informed of the locality amount and price in cash at which it could be knocked down, John Chebaux bid two hundred and fifty dollars, (and the Gregorio Caro augmented the bid to five hundred and seventy-two dollars), Gabriel de Rivas five hundred and seventy dollars, the said John five hundred and seventy-one dollars and the hour fixed having arrived, and the said bid having again in loud and intelligent voice been cried out by said Cortez, and there being no other person who offered a higher bid notwithstanding the said bid being cried out several times, it was ordered by their worships in view of its being the hour fixed for closing the sale that it be knocked down, which the three customary raps was done to the said Gregorio Caro. And that it may appear, he

signs with the curator and heirs that were present and with their worship to which we give faith.

GREGORIO CARO,
For my wife Mrs. Paula Rivas.
JOSE ESTAVAN CARO,
GABRIEL RIVAS.
EUGENIO ANT'O SIERRA,
FERNANDO MARENO,
DOM'O SAUSA,
JOSE CEVALLOS.

In the said city on the 21st instant, appeared in this office Gregorio Caro, the same person to whom was bid on yesterday the three hundred arpents of land belonging to the estate of Gabriel De Rivas deceased, and tendered the amount of five hundred and seventy-two dollars at which they were adjudged to him as being the best bidder and so that it may appear we extend this procedure which he signed and of which we give faith.

DOMINGO SAUSA. GREGORIO CARO,
JOSE CEVALLOS.

208 Pensacola, Oct. 21 1817.

S..... The bidding off that was made yesterday of the three hundred arpents of land to Gregorio Caro, is approved in all as to right and therefore the authority and judicial decree interposed for its greater validity and force and it appears from the former proceedings that he has paid to the assistant wi-nesses the amount of five hundred and seventy-two dollars. Ordered that the amount be deposited in the public office while another order is given and that testimony be issued to the purchaser, of the proceedings of the sale and of this proceeding if he solicits the same, that it may serve him as title in form. Charges three dollars, which with the costs will be paid out of the common fund.

MASOT, HERNANDEZ,
DOMINGO SAUSA, JOSE CEVALLOS.

On the same day we made it known to all the heirs, curator and tutor of the estate of Gabriel Rivas, deceased, and also to the widow of said deceased. In faith whereof.

SAUSA. CEVALLOS.

Dn. Eugenio Ant'o Sierra in the proceedings of the estate of Gabriel Rivas as testamentary executor therefor and as better in right is required, to your excellency says: That sale of the land belonging to said estate having been made, and being the only property that remained for sale, your excellency

should be pleased to order that by the tribunal an accountant be appointed to make division and partition of what corresponds to the widow and minors to which and which I ask being according to justice. I swear not to proceed from malice, but as necessary.

EUGENIO ANT'O SIERRA.

Pensacola, Oct. 27, 1817.

He asked for name as accountant the sub-lieutenant D. Beunadentura Dubrueil to whom prior to his acceptance and oath of fidelity will be delivered the proceedings so that in accordance with the ordering of the testator, that already performed and rules of law he state the proper account of division and settlement between the widow and heirs presenting it to the tribunal so that it may proceed with what else may be necessary and let there be paid the costs of the money of the sale of the land belonging to this estate. Assess two dollars.

MASOT, COMMANDER.
DOMINGO SAUSA. JOSE CEVALLOS.

209 On the same day we made it known to Dn. Eugenio Ant'o Sierra and to Da Maria Moreno. In faith whereof.

SAUSA. CEVALLOS.

Taxation of costs caused by these proceedings as ordered and according to tariff of fees.

	BUS.
To his excellency the Governor for 17 half signatures and one assistance	56
To the auditor of war for the memorials, pages 42, 49, 54, 58, 61, and 62 and one assistance	130
To the appraisers for valuation of the three hundred arpents of land	45
To Madam Widow Rivas for a petition	5
To Dn. Eugenio Sierra for his petition and a certificate of the priest	47
To Dn. Ramos Villilta and Dn. Fernando Moreno for two petitions	10
To the assistant witnesses for one assistance 17 memorials, 5 proceedings and proof of the will and notifications	122
To the taxer of costs for said occupation	16
Total	431

Which are 53 & 7 bits.
Pensacola, Oct. 29, 1817.

DOMINGO SAUSA.

In the City of Pensacola on the 8th day of November, 1817, I, Dn. Buenadenture Dubreuil, sub-lieutenant of the regiment of Louisiana, accountant appointed by the tribunal by decree of the divide between the heirs the property of the deceased Dn. Gabriel De Rivas, having seen and taken charge of the inventories and appraisement of said property that alleged by the interested party the proceedings had, and of what else is contained in the order now in my possession, in virtue of which I proceed to make such partition, but making first of all a statement of the property chargeable in this interitance as follows:

Statement of property.

First is put down as body of the property three thousand five hundred and eighty dollars	$3580.00
Item, five hundred and seventy-two dollars, at which were sold the three hundred arpents of land, referred to by the widow in said statement of which sale appears in the proceedings	572.00
Total....	$4152.00
210 Both items amount together to....	$4152.00

Diminution of statement of property.

Two thousand three hundred and sixty-three dollars to which amounts the statement of expenses that the widow presents at page 40 and 41.....	2363-½
Four hundred and twenty-nine dollars two and a half bits, to which amounts the repairs of one of the houses of the estate as appears per receipts p. 3, 4, 5, and 6 numbered from one to four	429-2½
Fifty-seven dollars and four bits amount of the bill p..... of the surgeon Dn. Eugenio Ant'o Sierra in which he shows the attendance and medicines which he gave and furnished during the long illness of deceased, Gabriel Rivas.....	57.4
Fifty-three dollars and three bits, amount of the cost bill accrued in these proceedings as appears p...	53.7
Forced commands	.6
Total....	$2904.4

To that as is shown the mass of property is four thousand one hundred and fifty-two dollars from which deducted two thousand nine hundred and four dollars and four bits, which

is the total of the reduction, there remains one thousand two hundred and forty-seven dollars and four bits, to be divided as follows: to-wit:

To Maria Moreno, widow of Gabriel De Rivas two hundred and fifty-two dollars coming to her as balance of dower, as is especially explained in the clause of the will.... .... $250

Nine hundred and ninety-seven dollars and four bits which divided between the eight children and grand-children as heirs that appear in the proceedings, the [that] comes to each one, one hundred and twenty-four dollars and five and a half bits.... .. .. 997.4

$1247.4

211 According to which I have furnished this particular between the widow and heirs mentioned save errors and omission date ut ra.

Note.

There remains to be divided a debt of the Royal Exchequer of three hundred and fifty dollars as is shown in proceedings p. 7 between lines 2.

BUENDENTURA DUBREUIL.

To His Ex. the Governor:

Dn Buenadentura Dubreuil, sub-lieutenant of the regiment of Louisiana, judicial accountant appointed in the proceedings of the estate of Gabriel Rivas deceased, in that form which is required by law to your Ex. says: That I duly present the account of division and partition of the property that has remained of the said Gabriel Rivas, so that your Ex. will please order that notice thereof be given to the interested parties for their approval. Therefor I ask your Ex. to please order to be done what I ask in justice, and I swear, etc.

I also ask your Ex. to take into consideration the work of this account, and to order each party allow me that amount it may deem just, and which I ask, ut supra.

BUENDENTURA DUBREUIL.

Pensacola, Nov. 11, 1817.

Give notice to the parties of the account of division and partition.

DOMINGO SAUSA, JOSE CEVALLOS.

On the same day we made it known to Dn Maria Moreno. We give faith.
SAUSA, CEVALLOS.

Immediately thereafter we did so to Dn. Eugeno Ant'o Sierra and Dn. Juan Melagosa. In faith whereof.
SAUSA, CEVALLOS.

Instantly we made it known to the other heirs of the estate.
SAUSA, CEVALLOS.

To his Ex. Governor:

Da Maria Moreno, widow of Dn. Gabriel De Rivas, a citizen of this place, and Dn. Eugenio Sierra, tutor and curator and litel of the minors, and we the undersigned, with that attention which is due to your Ex. says: That having seen the division of the property that was left at the death of
212 her husband, Dn. Gabriel De Rivas, we conform to all that has been done and notwithstanding the obnoxious. Your Ex. will please order what may be most proper according to law and suitable touching this matter.

Pensacola, Nov. 14, 1817. MA MORENO.

For my wife Da Paula De Rivas.
For my minor children. JOSE ESTAVAN CARO.
RAMON VILLILTA,
GABRIEL RIVAS,

For my minors. FERNANDO MORENO.

At request of Dn. Juan Malagosa for not knowing how to write.
JOSE TREULLO.

Pensacola, Nov. 14, 1817.

Having seen the conformity of the widow, Da Maria Moreno, that of the curator of the minors Dn. Eugenio Ant'o Sierra, and of all the other heirs that have signed to this petition, let there be delivered to the widow her quota and that of the minor children as Curotria addbona of them, subject to the bond offered by Dn. Juan De La Rua, to which it will be made known so that he executed it before the delivery, and for what touches the other minors let it be known also to their fathers so that they execute in person in simple condition to make good. And in as much as Da Paula is of lawful age let her share be delivered to her husband who in the same manner will execute the corresponding receipt offered to answer for the same with his person and property. And in as much as

the minor Candiat Riera has a curator by this tribunal in the estate of her deceased father, and that he has given the required security let her share be delivered to him under the proper receipt, there being delivered first to Dn. Eugenio Sierra the amount which he claims, and which was ordered paid him by proceeding of 17, of Oct. last past, he giving receipt as aforesaid, all of which will be united to these proceedings that it may appear. File these in the archives taxing first the last costs including twenty-five dollars which will be allowed to the sub-lieutenant Dn. Bentura Dubreuil for his services.

MASOT, JOSE CEVALLOS.
DOMINGO SAUSA,

On the same day we made it known to the widow Da Marie Moreno. In faith whereof.

SAUSA, CAVALLOS.

213 Thereafter we did so to Dn. Juan Malagosa and to Dn. Eugenio Ant'o Sierra. In faith whereof.

SAUSA, CEVALLOS.

At the same time we did so to all the other heirs of the estate.

SAUSA, CEVALLOS.

In the said City of Pensacola, on the 15th of said month and year before your Ex. appeared Dn. Juan De La Rua, of this vicinity and commerce and said that he and hereby does constitute himself as surety for Da Maria Moreno to the amount of two hundred and thirty and four bits which she received of the shares in division of her two minor children, Gabriel and Leonard Rivas, and by virtue hereof he binds and makes himself responsible for the above amount as bound debtor and as his own indebtedness in case of opposing suit.

To the firmness of which he binds his property had and to be had with authority to the justice of his majesty for its performance to compel him.

In testimony of which he so said, executed and signed to his excellency to which we give faith.

JOHN DE LA RUA,
MA MARIA,
DOMINGO SAUSA, JOSE CEVALLOS.

Marginal Note. That under this date the foregoing bond executed by Dn. John De La Rua, has become null and of no effect, and so that it may appear we not it and give faith.

Pensacola, 22 of March, 1821.

SEBASTAN CARO.

Therefore before his said excellency appeared Dn. Fernando Moreno of this vicinity and said that he and hereby does constitute himself as surety for Dn. Ramon Villilta to the amount of one hundred and seventeen dollars, three and a half bits, which he receives for the shares in division of the property of Gabriel De Rivas deceased, of his two minor children Yridoro and Ramon, and by virtue hereof he binds and makes himself responsible for the above amount as bound debtor, and as his own indebtedness in case of opposing suit.

To the firmness of which he binds his property had and to be had with authority to the justices of his majesty for its performance to completion.

In testimony of which he so said, executed and signed
214 with his excellency as the assistant witness, to which we give faith.

FERNANDO MORENO,
RAMON VILLILTA,
JOSE CEVALLOS.

DOMINGO SAUSA.

At the same time, before his said excellency appeared Dn. Ramon Villilta of this vicinity and said that he and hereby constitutes himself as surety for Dn. Fernando Moreno to the amount of one hundred and seventeen dollars and three and a half bits, which he received for the share in division of his minor daughter Ma Dolores in the property of Gabriel De Rivas deceased, and by virtue hereof he binds and makes himself for the above amount, responsible, and bound debtor, and as his own indebtedness in case of opposing suit.

To the firmness of which he binds his property had and to be had with authority to the justices of his majesty for its performance to compel him.

In testimony of which he so said executed and signed with his excellency as the assistant witnesses to which we give faith.

FERNANDO MORENO,
RAMON VILLILTA,
JOSE CEVALLOS.

DOMINGO SAUSA.

I, Dn. Eugenio Ant'o Sierra do say that I have received from the assistant witnesses the sum of fifty-seven dollars and four bits, for account of the estate of Gabriel D. Rivas, deceased, as is ordered by the proceeding of the 17th of Oct., of the current year in matter of said estate.

Pensacola, Nov. 15, 1817.

$57.4 bits. EUGENIO ANT'O SIERRA.

DOMINGO SAUSA.

the minor Candiat Riera has a curator by this tribunal in the estate of her deceased father, and that he has given the required security let her share be delivered to him under the proper receipt, there being delivered first to Dn. Eugenio Sierra the amount which he claims, and which was ordered paid him by proceeding of 17, of Oct. last past, he giving receipt as aforesaid, all of which will be united to these proceedings that it may appear. File these in the archives taxing first the last costs including twenty-five dollars which will be allowed to the sub-lieutenant Dn. Bentura Dubreuil for his services.

MASOT, JOSE CEVALLOS.
DOMINGO SAUSA,

On the same day we made it known to the widow Da Marie Moreno. In faith whereof.

SAUSA, CAVALLOS.

213 Thereafter we did so to Dn. Juan Malagosa and to Dn. Eugenio Ant'o Sierra. In faith whereof.

SAUSA, CEVALLOS.

At the same time we did so to all the other heirs of the estate.

SAUSA, CEVALLOS.

In the said City of Pensacola, on the 15th of said month and year before your Ex. appeared Dn. Juan De La Rua, of this vicinity and commerce and said that he and hereby does constitute himself as surety for Da Maria Moreno to the amount of two hundred and thirty and four bits which she received of the shares in division of her two minor children, Gabriel and Leonard Rivas, and by virtue hereof he binds and makes himself responsible for the above amount as bound debtor and as his own indebtedness in case of opposing suit.

To the firmness of which he binds his property had and to be had with authority to the justice of his majesty for its performance to compel him.

In testimony of which he so said, executed and signed to his excellency to which we give faith.

JOHN DE LA RUA,
MA MARIA,
DOMINGO SAUSA, JOSE CEVALLOS.

Marginal Note. That under this date the foregoing bond executed by Dn. John De La Rua, has become null and of no effect, and so that it may appear we not it and give faith.

Pensacola, 22 of March, 1821.

SEBASTAN CARO.

Therefore before his said excellency appeared Dn. Fernando Moreno of this vicinity and said that he and hereby does constitute himself as surety for Dn. Ramon Villilta to the amount of one hundred and seventeen dollars, three and a half bits, which he receives for the shares in division of the property of Gabriel De Rivas deceased, of his two minor children Yridoro and Ramon, and by virtue hereof he binds and makes himself responsible for the above amount as bound debtor, and as his own indebtedness in case of opposing suit.

To the firmness of which he binds his property had and to be had with authority to the justices of his majesty for its performance to completion.

In testimony of which he so said, executed and signed
214 with his excellency as the assistant witness, to which we give faith.

FERNANDO MORENO,
RAMON VILLILTA,
JOSE CEVALLOS.

DOMINGO SAUSA.

At the same time, before his said excellency appeared Dn. Ramon Villilta of this vicinity and said that he and hereby constitutes himself as surety for Dn. Fernando Moreno to the amount of one hundred and seventeen dollars and three and a half bits, which he received for the share in division of his minor daughter Ma Dolores in the property of Gabriel De Rivas deceased, and by virtue hereof he binds and makes himself for the above amount, responsible, and bound debtor, and as his own indebtedness in case of opposing suit.

To the firmness of which he binds his property had and to be had with authority to the justices of his majesty for its performance to compel him.

In testimony of which he so said executed and signed with his excellency as the assistant witnesses to which we give faith.

FERNANDO MORENO,
RAMON VILLILTA,
JOSE CEVALLOS.

DOMINGO SAUSA.

I, Dn. Eugenio Ant'o Sierra do say that I have received from the assistant witnesses the sum of fifty-seven dollars and four bits, for account of the estate of Gabriel D. Rivas, deceased, as is ordered by the proceeding of the 17th of Oct., of the current year in matter of said estate.

Pensacola, Nov. 15, 1817.

$57.4 bits. EUGENIO ANT'O SIERRA.

DOMINGO SAUSA.

On the same day appeared before his excellency Dn. Jose Estavan Caro of this vicinity and said that he had received from the estate of Gabriel De Rivas, dec'd, in the division of the property thereof, the sum of one hundred and seventeen dollars and three and a half bits, belonging to his wife, Dn. Paula Rivas, and so that it may appear he signs with his excellency, to which we give faith.

For my wife Da Paula De Rivas.

JOSE ESTAVAN CARO.

DOM'O SAUSA.

215 At the same time the widow Da Maria Moreno received the sum of four hundred and seventy-six dollars and one bit in full of what is coming to her in the property of her deceased husband as appears by the last settlement which in the presence of his excellency and the other heirs was made by the accountant Dn. Bentura Dubreuil, and to all of which she freely acknowledged receipt, and that it may appear she signed, to which we give faith.

MA MORENO,

DOMINGO SAUSA. JOSE CEVALLOS.

I, Dn. Juan Malagosa do say that I have received from the assistant witnesses one hundred and seventeen dollars and three and a half bits, amount coming to the minor Candita Riera from the divided property of the estate of Dn. Gabriel De Rivas, and as tutor that I am of said minor.

Pensacola, 15 November, 1817.

At request of Dn. Juan Malagosa for not knowing how to write.

Taxation of costs lately accrued in this proceedings:

	Dolls.	Bits.
To his excellency the Governor for his perquisites	5	4
To the sub-lieutenant Dn. Bentura Dubreuil for his services....	25	4 ½
To the deposit.....	23	
To the assistant witnesses for their services.....	2	2
To the one taxing.....		5
	$56	7 ½

DOMINGO SAUSA.

Pensacola, Nov. 15, 1817.

To His Excellency the Governor:

Dn. Joan Caro and Dn. Juan Melagosa, the first representing his wife Dn. Paula Rivas, daughter of Gabriel De Rivas

dec'd and the second as tutor ad litem of Candita Rivera, granddaughter of the aforesaid deceased, answering to the proceedings that the tribunal has been pleased to serve upon us, touching those things being had by Da Maria Moreno, Widow Rivas. Before you come and say that we have fully examined the said proceedings, receipts and accounts presented by said widow to which we fail to find any objection as she has had great expense in the prolonged sickness of her deceased husband and her numerous family which remained on her hands without any other resources than the two properties which are mentioned in said accounts and proceedings.

It is also known to us that one of the two properties was a store greatly deteriorated, and so that it could remain standing it became necessary for the widow to have many re-
216 pairs made to it, such as chimneys, roofs, kitchens etc., and as to what refers to the three hundred arpents of land to proceed to valuation and sale thereof, so as to unite the proceedings to the common fund, and by these means to proceed to make the partitions that may belong to the heirs, leaving to the tribunal to do in justice what it may deem convenient.

Having answered the notice which has been served on us under date of 13, instant.

Pensacola, 15 Sept., 1817.

For my wife Da Paula De Rivas.
JOSE ESTAVAN CARO.

At request of Dn. Juan Malagosa for not knowing how to write.
JOSE TRUELLO.

Translator's Note. This is the order to which attention is called by translator in the first part of this translation.

Pensacola, Sept. 17, 1817.

Proceeding heard. Let the arpents of land belonging to this estate be valued and sold at public outcry at the time to be ordered.

Annexed copy of the will executed by Gabriel De Rivas, and let it appear for other preceedings that may be required.
DOMINGO SAUSA. HERNENDEZ,
MASOT, JOSE CEVALLOS.

On the same day we made it known to the exponents.
DOM'O SAUSA. CEVALLOS.

To His Excellency the Governor:

Dn. Ju Devla Rua citizen and of this commerce with that attention which is due to your Ex. says: That to do favor and a good deed he became bondsman for Da Maria Moreno, Widow Rivas, so that might be delivered to her the portion belonging to her minor children, the proceeds to the partition and the liquidation made of the property that was left by the death of her deceased husband, under the belief that the widow would relieve him of the bond immediately, and after she had purchased a house which she told him she was to purchase and would purchase, but as up to this date she has not done so, though two years have elapsed since I became her bondsman, therefore I beg that your Ex. will order and decree that within a certain time that she deposit with whom the tribunal may deem convenient the share which now belongs to one of her
217 minor children as I understand that by the death of the others she becomes heir of their share.

In all of which it is justice which I pray, with cost, swear not to proceed from malice.

JOHN DE LA RUA.

Pensacola, 3 Sept. 1819.

Make it known to Da Maria Moreno that she comply with what this party asks during the precise time of five days, or in default thereof she abide by what may be ordered in law.

CEVALLOS, SUAREZ,
DOMINGO SAUSA. JOSE CARO.

On the same day we made it known to Dn. John De La Rua. In faith whereof.

SAUSA, CARO.

On the same day we went to the house of Da Maria Moreno, and after having informed her of the foregoing order she answered that having been approached touching the same matter she had tendered as her bondsman, and to relieve Dn. De La Rua therefrom, Dn. Battasar Centeno at the time that the United States had this place, and that she thought that it had been done as is to her knowledge that she had paid the cost of the writing.

And so that it may appear we give it as her answer, and of which we give faith.

DOMINGO SAUSA. JOSEPH CARO.

To the Constitutional Alcade:

Dn. Jn. de la Rua of this commerce before you with that respect which is due, saith, that during the month last past

he petitioned the tribunal to notify Da. Maria Moreno, widow Rivas, to relieve him from the bond that to do her a favor he had executed, and that she might receive the quotas of her minor children, under the firm assurance that the said Ma. Maria Moreno purchasing a piece of property as she had offered to do, would by herself give the security, and relieve him of the responsibility. All of which she has not done, acting in bad faith and abusing of my carelessness and making light of the orders of the tribunal, for since the referred month of September she has been notified to comply with my request and to do what of right ought to be done, as appears in the records in your charge. Therefore, I ask that you order and decree that I be relieved from the bond within a precise and peremptory time, and that it not being done, that execution give against the said widow, levying it on any of her property, it being justice
218 which, with expenses and costs, I ask, swear only to ask justice necessary, etc.

JOHN DE LA RUA.

Pensacola, 17 Feb'y, 1821.

Examine into under the complaint of this petitioner, and being done attach to this and make report, so that may be ordered that what may correspond.

De Grand Pre.

LUOIS DAUNOY. SEBASTIAN CARO.

Pensacola, Feb'y 17, 1821.

Make it known to Da Maria Moreno that for the second time she is warned that within the term of five days she is to proceed to raise the security asked by this party subject to what, upon default may be done.

De Grand Pre.

LOUIS DAUNOY. SEBASTIAN CARO.

On the same day we made it known to Dn. Juan de la Rua: In faith whereof:

DAUNOY. CARO.

Thereafter we did so to Maria Moreno. In faith whereof:

DAUNOY. CARO.

Pensacola, Feb'y 21, 1821.

Notwithstanding that Da Maria Moreno has appeared in this Court with her bondsman Dn. Battasar Centeno to raise the security asked by Dn. Juan de la Rua, and not offering to do so for the full amount thereof but with deduction of what she has expended and paid her deceased son, Gabriel de Rivas, let it be

known to the said Da Ma Rivas to classify by truthful witnesses so that this tribunal upon examination may determine of what in justice ought to be done.

De Grand Pre.

LOUIS DAUNOY. SEBASTIAN CARO.

On the same day we made it known to Dn. Maria Moreno, widow Rivas. In faith whereof:

DAUNOY. (see below) No. CARO.

I will pay to my mother one hundred and nineteen dollars that I owe her for my maintenance and clothing, and which is due me by the Royal Exchequer for my work.

Pensacola, July 2, 1817.

GABRIEL RIVAS.

219 I have given to Gabriel Rivas in silver as follows:

	Dolls.	Bits.
Foe[r] the titles of his land	19	3
To pay (translator can't make out what)	43	
To him who showed him the place	2	
Two pairs of shoes	6	3
In silver	7	4
	88	2

To the Constitutional Alcade:

Da Maria Moreno before you with due respect says that as testatrix and curatrix of her two children, Gabriel and Leonard de Rivas, she received from the tribunal the shares paternal that belonged to them its total two hundred and twenty-six dollars and three bits, and Dn. Juan de la Rua becoming surety for her and as the said

No. Immediately thereafter we did so to Dn. Juan de la Rua. In faith whereof:

DAUNOY. CARO.

La Rua would wish to be released of his said responsibility, it has pleased you to order that the security be changed and given by Batassar Centeno who has offered to become such that is for what appertains to my son Leonardo, favor and justice which I pray from you known justice. Pensacola, 2 March, 1821.

She also prays that you will please order that information be taken under the oath and that Dn. Louis Gayarro and Dn. Eugenio Ant'o Sierra and Dn. Battassar Centeno testify if they heard my son Gabriel say that he had received from me

his paternal share, and they also testify whether they know that my said son Gabriel stayed in my house from the time that he was married and that he was assisted by me during the long period of his sickness, I have born the expenses of his coffin, interment, etc., and there being yet due and unpaid the physician, and in further proof of what I say, I having a due bill which I accompany from my said son of one hundred and nineteen dollars and six bits and all of which I will have that nothing remains due him out of the paternal share that was in my charge.

Considering the above to be sufficient for you to annul and make void the security touching said amount, and end this matter, which is justice which I ask, etc.

MARIA MORENO.

Pensacola, 2 March, 1821.

220 Let the witnesses that are named appear on to-morrow and testify as to order what is proper.

DE GRAND PRE.
LOUIS DAUNOY. SEBASTIAN CARO.

On the same day we made it know to Da Maria Moreno. In faith whereof:

DAUNOY. CARO.

In the City of Pensacola on the third day of the month of March, 1821, by virtue of the foregoing petition and decree thereto, Dn. Eugenio Ant'o Sierra, a citizen of this place, and professor of surgery, a witness tendered by da Maria Moreno, whom being sworn before the assistant witnesses in due form and under which he offers to tell the truth as to what he knows and may be questioned touching the questions contained in the foregoing writing, said that he positively known to be true what is asked and to which he is interrogated, he having seen and heard the whole of and to which are directed the questions that are asked him, and approved and ratified his said testimony after it having been read to him. He said that he was of lawful age, and signed with his grace to which we give faith.

De GRAND PRE. EUGENIO ANT'O SIERRA.
LOUIS DAUNOY. SEBASTIAN CARO.

Immediately thereafter appeared Dn. Louis Gayarro of militia with grade of the army, gentleman of the military order of St. Hermenegildo, to whom his grace as being a witness tendered by Da Maria Moreno who prior to the verbal permission of this place was sworn in military form under which he offered to tell the truth of what he knows, and shall be in-

terrogated touching the matters of interrogation by Mrs. Maria Moreno, said that it is true that from the beginning of the sickness of her son, Dn. Gabriel Rivas, as is stated by her, and in whose house he stayed and was assisted by her as was recited by her until his death. And as to what touches to the information mentioned by said lady the only thing he remembers is that before his sickness deceased told him in presence as he recollects of Dn. Eugenio Lavallo that he had received about one hundred and fifty dollars. And this is all that he can say in answer to the particulars contained in the aforesaid writing and interrogatories. He said that he was of lawful age, and signed with his grace and us the assistant witnesses. To which we give faith.

DE GRAND PRE. LOUIS GAYARRO.
LOUIS DAUNOY. SEBASTIAN CARO.

221 Pensacola, March 20, 1821.

It having been certified by the testimony aforesaid that Maria Moreno, widow Rivas, has paid the share that belonged by inheritance to her son, Dn. Gabriel, let it be admitted for half the security that was given by John de la Rua and to her son by Dn. Battassar Centeno, the first being relieved from said security, all of which will be noted on the margin of the book "Cuaderno" in which it is entered so that it may appear, and let there extended in this the amount offered to be given by said Centeno.

DE GRAND PRE.
LOUIS DAUNOY. SEBASTIAN CARO.

In the City of Pensacola on the 22 day of the month of March, 1821, before the Alcade Constitutional of this place appeared Dn. Battassar Centeno with respect to the foregoing proceedings and said that he does and hereby binds himself to answer for Da Maria Moreno, widow Rivas, for the sum of one hundred and thirteen dollars and three bits total amount for which Dn. John de la Rua had bound himself for the said Maria Moreno, and belonging to her two children, Dn. Gabriel and Dn. Leonardo, and as it appears that the said Da. Maria Moreno as appears by the foregoing proceedings as appears by the first, he only remains bond to answer for one hundred and thirteen dollars and one and a half bits to the second, and for which responsibility he mortgages expressly and distinctly the house belonging to him No. 6 which is bounded by a lot of Juan Lorda on the east and on the west by another lot that belonged to Augustin Valverde and asked that it be noted in the book of mortgages for its constancy. And bound for its firmness his person and property had and to be had and

gave power to the justices that for its compliance he be compelled. In witness whereof he so said but did not sign for not knowing, and it was done at his request by one of the witnesses who was Domingo Sausa, Dn. Jose Cara and Dn. Franco Llopis and as assistant witness those who with me sign.

At the request of Battassar Centeno not knowing how to write:

DE GRAND PRE. DOMINGO SAUSA.
LOUIS DAUNOY. SEBASTIAN CARO.

Pensacola, March 22, 1821.

In as much as the foregoing bond has been executed by Dn. Battassar Centeno for the minor son of Gabriel de Rivas, deceased, Leonardo, and that the widow Maria Moreno
222 has proven in due form that she has paid the paternal share of her deceased son Gabriel, the security that was given by the citizen Dn. John de la Rua remains from this moment null and of no effect and remains in force that given by Dn. Battassar Centeno for the one hundred and thirteen dollars and one and a half bits, to which amounts that of the said minor Leonardo.

Let the proceedings be extended first being taxed the costs, which will be paid by the widow Maria Moreno.

DE GRAND PRE.
LOUIS DAUNOY. SEBASTIAN CARO.

On the same day we made it known to Da Maria Moreno. We give faith:

DAUNOY. CARO.

Taxation of costs accrued lately in this estate as ordered and according to tariff:

To the Alcade for his fees, seventy bits..... 70 bits
To the assistant witnesses for all done and written seventy-nine bits ..... 79 bits

149 bits

Making $18.5 bits.

Pensacola, 22 March, 1821. DOMINGO SAUSA.

STATE OF FLORIDA,
Escambia County.

I, F. E. de la Rua, keeper of the Spanish Archives of West Florida, do hereby certify that the foregoing pages numbered

from one to sixty-one contain a correct translation from the manuscript proceeding now on file in said archives in the matter of sale of land in the estate of Gabriel de Rivas, deceased, and other matters of said estate. The said translation being from Spanish into English.

Given under my hand and private seal (the official seal being lost or misplaced) this 27th day of August, A. D. 1887.

[SEAL] F. E. de la RUA,

Keeper of Public Archives of West Florida.

Defendants offer translation page 425 of Book "A" of the proceedings of the commissioners of the settlement of land claims in the West District of Florida, purporting to be those proceedings and giving the title to this ground. Which pages are set out in words and figures as follows:

223 *Exhibit* "15."

John Chebeaux Claim to Three Hundred Arpents of Land.

John Chebeaux presented a claim to three hundred arpens of land, and produced a regular act of sale duly authenticated from Gregario Caro to the claimant, dated the 22nd day of October, 1817, and the following original grant of the said tract of land to Gabriel de Rivas, dated 10th November, 1806.

Mr. John Ventrua Morales, provisional intendent of the Province of West Florida, and sub-delegate of the superintendence general of Royal Exchequer therein, judge of "Arrabadas" of vacant lands and lots, etc., in as much as the solicitation of Gabriel de Rivas, a resident and old inhabitant of this place was presented a petition to this general administration on the ninth of April of this current year, asking that as a settler it be granted to him grat-itously the vacant lot occupied by the house No. 113, and from the information given by the Royal Exchequer, it appearing that the buildings contained thereon, were destined for the use of the Royal Hospital, and that for the reasons that were alleged by the said interested party another lot that might be vacant can be granted to him. It was decreed without notice of said petition, on the eighth of July following, informing him that he determinately resignate the place in which there was vacant lots.

He again applied by another petition of the 28th of the said July, asking for a lot of three hundred superficial arpens at a half league, more or less, from this place, at the mouth of the Bayou Texar, and by the decree of the 31st, it was ordered that the said petition pass to Mr. Vincente Sebastian Pintado to measure and make the limits and bounds of said lot, forming

a figurative plan, which he presented with a certificate, at the foot thereof, of the survey at more than a quarter of a mile of English terrestrial measurement from the mouth of the rivulet of the marsh between the north, northeast and northeast by north, which rivulet is the extreme east of this population, according to the plan thereof, and is bounded northerly and westerly by the vacant lands, southerly in confines with the Bay of Pensacola, and easterly with the rivulet of the Texar, its most westerly limit being north of the compass with a declination of seven degrees and fifty minutes to the northeast, as is shown by said plan in which is figured the lot, noted the dimensions of its sides in lineal perches of Paris, and in view of everything that is already expected in reference thereto and in conformity with the opinion of the said counsellor, a decree was, on the seventeenth of October ultimo, issued, which is as fol-
224 lows: In conformity with what is expected by the Minister of the Royal Exchequer, and in just considerations of the reasons alleged by Gabriel de Rivas, it is conceded to him, the lot of three hundred superficial arpens of land, which is demonstrated by the proceeding plan, with condition of establishing himself thereon and populating it within two years. I bring to him the corresponding title in the ordinary form. Therefore, using of the powers that the King our Master (Whom God preserve) has conferred upon me, and in his Royal name, I grant to the said Gabriel de Rivas the three hundred superficial arpens of land, which are already mentioned under the boundaries, courses, and distances which are shown by the figurative plan, which plan will be affixed to this title, and in consequence thereof, I impart to him full and direct domain, so that as his own, he possess, cultivate, sell or aleinate at his will as granted grat*it*uously and without interest whatever in favor, of the Royal Exchequer, and I grant him the power to take in possession or continue in possession that he may have thereof, and in which I place, and will protect him without prejudice from a third party that may have a better right thereto, with the stipulation and condition that he must comply with what is ordered in the instructions about lands, that was enacted and published by the general administration of the retroceded province of Louisiana, on the seventh of July, one thousand seven hundred and ninety-nine, in faith of which, I order these presents to issue, signed with my hand, sealed with the seal of my coat of arms, and countersigned by the undersigned active secretary of this general administration, in whose office, as also in that of the office of the Royal Exchequer of this place, will remain registered, and account taken thereof, given at Pensacola, on the tenth of November, one thousand eight hundred and

six. John Ventura Morales (seal) Tram Guttieros de Arroyo, the foregoing title remains registered in the book destined for that purpose in the office of my charge, at page 50, 51 and 52, and to which I refer.

Pensacola, 10th of November, 1806.

FRANCO GUTTIEROS DE ARROYO.

Surveyor's Certificate.

In the general auditor's office in the Army of the province, an account was taken of the foregoing title, at pages seventy-seven and seventy-eight.

Pensacola, November 10th, 1806.

JOHN ARMAND COURVILLE,
FRANCO GYTTIEROS DE ARROYO.

225 Mr. Vincente Sebastian Pintado, Captain of Militia, Cavalry and Surveyor General of West Florida, certifies that, on the days of the second and third of the present month of the present year, I measured, bounded and land marked, for Gabriel de Rivas, a citizen of this place, in the presence of the witnesses Mr. Anthony Molino and Marcus Riera, the interested party not being able to assist, a lot of three hundred of area and arpens of land, measured at the lineal perches of the City of Paris, eighteen lineal feet of the same city, containing one hundred level perches per arpen, according to a gravian practice of this province, situated more or less at a quarter of a mile of English terrestrial measurement from the mouth of the rivulet of marsh between the northeast and northeast by north, which rivulet is the extreme east of this population, according to the plan thereof, and is bounded northerly and westerly by vacant lands, southerly it confines with the Bay of Pensacola, and easterly with the rivulet of the Texar, its most western limit to the north and that which terminates the profundity to the east, all as per compass with a declination of seven degrees and fifty minutes to the northeast, as is more clearly shown by the plan which proceeds and in which is figured the lot, and is noted the dimensions of its sides in lineal perches of Paris, the trees and land marks that serve as boundaries and other marks and confines natural and artificial.

The survey was made by virtue of a decree of Mr. John Ventura Morales, intendent general of the province, and subdelegate of the superintendence general, Judge of "Arribadas" of vacant lands, dat-d thirty-first of July ultimo, and so that it may appear I give these presents, at Pensacola, on the 6th day of the month of October, in the year 1806.

VINCENTE SEBASTIAN PINTADO.

It is a copy of the original plat and procedure, which is annexed to the proceeding in the matter, and which is taken to annex to the title of concession ordered to be issued by decree of seventeenth instant, and remains registered in book 7, fo. 16, No. 1793.

Pensacola, 27th October, 1806.

VINCENTE SEBASTIAN PINTADO.

I, F. E. de la Rua, keeper of the Spanish archives of West Florida, and translator from the Spanish into the English, do hereby certify that the foregoing is a correct translation into English of the Spanish grant to Gabriel de Rivas, and made from said grant on record in said archives in my charge in book "A" of records of Spanish titles. For plat accompany-
226 ing said grant (and the tracing of which is omitted by me and does not accompany this translation) reference is made to said book "A" of said records.

Given under my hand and private seal, having no seal official at Pensacola, this 13th day of March, A. D. 1873.

[SEAL] F. E. DE LA RUA,

Keeper of Spanish Archives of West Florida.

STATE OF FLORIDA,
Escambia County.

I certify that the foregoing pages contain a true copy of a translation heretofore made by me.

Witness my hand and private seal, having no seal official (by misplacement on top thereof) this 25th day of April, A. D. 1879.

[SEAL] F. E. DE LA RUA,

Keeper of Archives of West Florida and Translator.

Defendants offer proceedings before commissioners for the settlement of land claims in Western Florida.

"Exhibit 16."

Book "A", pages 332-333.

John Chabeaux, claim to 300 a-pens of land.

John Chabeaux presented a claim to 300 arpens of land, and produced a regular act of sale, duly authenticated from Gregorio Caro to the claimant, dated 22nd day of October, 1817, and the following original grant of the said tract of land to Gabriel de Rivas, date 10th of November in the year 1806:

D-n, Juan Venturo Morales Intendante intermo de esta, Provincio de lo, Florida occidental, y subdelegado, de la superintenderno, General, de Real Hacienda en ello, tues de Arribodas de, tierros y, salore realengos &, a por quanto, por parte de, Gabriel de Rivas, viento y antigus havitante de, esta Plaza, se, presente, instancia, esta Intendencia general, ennuebe, de Abril, del corriente ano, fidiendo ql, un ..... de poblados, se la con cediese graciosamente, el te rreno Realengo, que denpa la, casa, No. 113, y que por el informe, que dir, el minuestra de, Real Haciendo resulta, que los ede fiecos contienedos, en el se encontrabon destinados para, ser vcio del real, real, Hospital, y que por, los rasones que allegabo, dicho interesado,
nodria consedeserlo, otro que, haviense vaconte, se decrito
227 su lugar, dicho solicidadeno ocho de Julio seguente previniendolese, designose Gerrenos vacantes.

—de nueve, por ocho instancios de 28, del mismo Julio solicitando un ferreno, de tres cientos arpanes, de superficie, a media, legua, poco mas, o menos, de esta Plaza. a, lo entrado, del Bayo, del Texar, y por decre, lo de treinto y uno, se mando, para el expediente, a Dn. Vicento Sebastin Pintado, para medir, y, destindes dicho terreno formando el, plano figurativo, que presente con certificacios al, pie de el, de, ladiligencia de A peo mas de me, quarto de milla, de los terrestros Inglesas de la boca, del anoguela del funcal entre el Nord, Nordeste, quarto, al Norte cuya Arroguelo es el, extremo del este de esto, Poblarion segun el, Plaza, de esta y tinda por la, parte selemtrionaly occidental con tierras realengos, por la meridional confina conlo Bahia, de Penzacola, y por el oriental con el Riochuelo del Texar, desig endose el limite mas deste al Norte de la bruxela, declinando esto siete grados y lingunta, minutos al, Nordeste como manspertos oho, Plaza en que que va, figurado el terreno anotada, las dimanciones de sus todas en perchas linea los de Paris y conreferencia, a quanto va expresado proes con dietainen del Senor mi Asesor interma, en dies y siete de Octubre ultimo mi anto cuya tenos la el que sigue vistos en conformedad, de la expuesto, por el Senor Ministro de Real Heciendo y por pesta consideracion a los razones alegados por Gabriel de Ribas se le concede, de Terreno de tres cientos Arpanes de superficie que de nuestro el Plaza, antecedente con calidad de establueste, en el y problarlo dentro, de dos anos despachandocete el correspondiente titulo en la forma ordinaria por tanto mando de los faltados que el Rey nuestro Senor (Dios le Guarde me tiena conferidos y en Su, real Nombre concedo, al expresada Gabriel de Rivas las tres cientos, arpens Planos de terra que. van mencionados, Arp. las tinderos ruenleas y distancios que, manifesto el plano figurativa que le mirro a este tihila y en

su consequencia le imparte entero de enageve a su, voluntad como concididos graciosamente y sin, interes alguna, a favor de la real Haciendoy le dos poder, pero que aprehenda su posesion o continue, lu lo que hibiere en la que pongo y amm para sin perficio de terrero que. me por derecho tengo con la calidad y condicion, de que ha de complir con la despuesto, en la instrucion que, sabre tierras forma y Publico, la Intendencia general de la retrocedido, Provincia de la Luisiana, en diez y y siete, de Julio mil sete cientos. Habenta y nuebe en fee: de lo qual mando, despertor al, presente firmado de un mova sellado con el de mis armos y referendada del infraseresto sure
taria; intermo; de, esto Intendencia general, en cuya
228 oficino como en la, del mismo terio de Real Haciendo de
esta, Plaza, quedoraregeotrado, y se lomore la razon Dodo en Penzacola, a dies de Novembre de Mil ocho cientos y sies, Juan Venturo Morales, sella Fran-cs, Guturso de Arroya finda registrada, el titula antecediente, en el libro destinada a esta fin en la seretaria de me largo, a buelto des 50,-51-y 52, registered a que me vesento Panzacola 10 de Noviembre de 1806.

Fran-co Guiteras de Arroya.....

En la conteduria pral, ex-fo de esta Provincera se tones varon del titulo ante, sedente a foras sententa y siete setenta y ocho, Panzacola, 10 de Noviembre de 1806, Juan Fran-co Arnaud, de Covriello.

D-n, Vicnta Sebastion Pintado los de cavalleria de Milineros y Agumenos general de lo Florida Occidental certifico que en la, dias dos y tres del corriente mes y ano, meditinda y aninfove, para, Gabriel de Rivas vecimo de esta, Plaza en presencia de los testig-l, D-n, Antonio Moleno y Marcus Rierra, no pudiendo asister el enteresad; mi Terren de tres cientos Arpens de area, y superficie plano, medidos, a la percha lineal de la cur da de Paris, de diez y ocho pies lineal de la missmo cuidad contando es en perchas, plavos por arpens segun los tuenbre graditico de esta Provincia situado para mas de mi quarto de milla de los terrestres ingles, de la boca del arroguela del funal, entre el N. N. E. y, N. E. 1-4 N. cuya arroguela, es el extriento del este de esto, poblacion segun, el Plano, de ellos y hudo por la parte seg tentrional y des dental, con tierras realengas por lo meridional confino, con la Bohea de, Penzacola, y por la Oriental, con el, Riochuelo del Texar, diregiendose el teniente mas deste al, Norte, y el que, terriros la propindosdad al este, todo de la bruxulo desteseondo, esta siete grados y linguiento minuta al Nord, este camo, mo claramento manifesto el plano que anteceda en el que va figurado el terreno anotados, los dimenciones de las todas, en perchas lineals de para los arboles y mofones que sirven, de linderos y los demas latos y confines

naturales y arteficiales El A pea le pra otico in virtud de Dureta del Senor D-n Juan Ventura Morales, Intendente gral, de esta Provincia y subdelegado, de la superintendencia general, tres de Arribo las de tierros y solares realingos, conjho triente y uno de Julio ultimo y para, que, conste, doy la presente en la Plaza, de Panzacola a los 6 dias del mes de Octobre de, 1806 anos.

VICENTA SEBASTION PINTADO.

Es copia del placea, y diligencia de opeo original que la halle, anexa al expediente del asunto y se sola, para mis al fitudo de con cep-n, asunto del corriento y que de registrado en
229 el libro V, II fol. 16, y z, No. 1793, Panz-la, 27 de Octubre de 1806.

V-ST SEBAST. PINTADO.

Defendants offer pages 332 and 333, Book "A," proceedings of board of commissioners, which is set out in words and figures as follows:

"Exhibit 17."

West Florida.

The claim of John Chabeaux to the eastern half of lot No. 243 was then taken up for examination, and the following title papers and testimony exhibited in support thereof, to-wit:

An original grant, or title in form, made to John Lewis by the Intendant Morales, countersigned by Vincente Ignacio Ramos and Joh Moralles, and dated the 20th of April, 1811. Also, a copy of a mesne conveyance from Benagno Garcia Calderon, attorney in fact of John Lewis, to the claimant, passed before Governor Masat, and the assistant witnesses, Sousa and Cevallos, on the 24th of October, 1817; certified to be a true copy by the same persons on the 6th of November, 1817.

Joseph E. Caro proved the signatures of Moralles, Ramos, John Moralles, Masot, Sousa and Cevallos.

Hernando Moreno being sworn, saith that John Lewis enclosed lot No. 243 and built a small framed house thereon in the year 1811, and further saith not.

The claim of John Chabeaux to 300 arpons of land on Bayon Texar was then taken up for examination, and the following title papers and testimony exhibited in support thereof, to-wit:

A copy of a plat and certificate of survey executed by V. L. Pintado, surveyor general, on the 2nd and 3rd and returned on the 6th of October, 1806; certified by the same on the

27th October, 1806; survey executed by order of the Intendant Marolles on the 31st July, 1806, in favor of Gabriel Rivas. Also, and original grant or title in form, made to Gabriel Rivas by the Intendant Marolles, countersigned by F. G. Arroza, secretary, and dated the 10th November, 1806. Also, a copy of a mesne conveyance from Gregario Caro to John Chabeaux, James Fitzsimmons and Samuel M. Smith, passed before Governor Masot, and the assistant witnesses, Sousa and Cavallos, on the 22nd October, 1817, certified to be a true copy by the same persons on the same day. This deed
230 reciter, that Caro purchased at a public sale of the estate of Gabriel Rivas, dec'd, on the 21st October, 1817. Also, a copy of a mesne conveyance from James Fitzsimmons to John Chabeaux, of his undivided third part of said land, passed before Governor Callava and the assistant witnesses, Sousa and Cora, on the 22nd November, 1819; certified by the same persons on the 11th December, 1819.

Joseph E. Caro proved the signatures to the foregoing title papers.

Fernado Moreno, being sworn, saith that Gabriel Rivas commenced improving the said tract of land between four and six months after he obtained the grant, continued the cultivation more than three years, and had about 4 acres cleared, enclosed and in cultivation, and further saith not.

The claim of Joseph Pal to 800 arpons of land between the Perdido river and Clear Water Creek, was then taken up for examination, and the following title papers and testimony exhibited in support thereof, to-wit:

An original petition of the claimant, addressed to Governor Zuniga, dated the 28th June, 1812, soliciting permission to settle on the land, and parying [praying] that a title in form be given her when she shall have occupied the land 10 years, agreeably to the regulations. Also, a decree of Governor Zuniga, dated the 29th June, 1812, acceding to the prayer of the petitioner.

Joseph E. Caro proved the signature of Zuniga.

Joseph Maura, being sworn, saith that he commenced improving the said tract of land in the year 1812 for and at the instance of Josefa Pal, and with her negroes; that the cultivation was continued until the year 1814, when it was abondened [abandoned] in consequence of the Indian disturb-a-ces, and has never since been resumed to his k-owledge; that he had from 10 to 12 acres under cultivation, and further saith not.

Antonio Collins, being sworn, saith that the cultivation of that said tract of land was renewed about the last of the year 1815 or first of 1816, by persons at the instance of Josefa Pal: and continued for 3 or 4 years, and further saith not.

231 The claim of Charles de Grandpre to lot No. 266 was then taken up for examination, and the following title papers and testimony exhibited in support thereof, to-wit:

An original grant, or title in form, made to the claimant by the Intendant Marolles, countersigned by F. G. Arroza, secretary, and dated the 24th June, 1812.

Joseph E. Caro proved the signatures to the grant.

Joseph Maura, being sworn, saith that Charles de Grandpre enclosed lot No. 266 and cleared off the undergrowth within a year after it was granted to him, but never built on it in consequence of its marshy section, and further saith not.

Defendants offer plats which are certified by Joseph E. Caro, keeper of the public archives, as being a plat of these lands and approved and confirmed by the commissioners and given under his hand and seal as keeper of said archives, particularly plat No. 7, which contains this property in controversy.

Which plat and description is set out in words and figures as follows:

Exhibit 18.

Plat "A", description of the courses and distances contained in said plat, to-wit:

300 arpens situated about a quarter of a mile from the mouth of the creek of marshy ground, between N. N. E. and N. E. 1-4 N. which is the extremity east of the Town of Pensacola, bounded on the north and west by vacant lands, on the south bordering by the Bay of Pensacola and on the east by Bayou Texar, directing the western limit on the north and the limit which terminates the depth on the east all by the compas [compass] declining 7 degrees and 50 minutes to the N. E.

Plat "B", 800 arpens two miles from the town of Pensacola, bounded on the south side by the stream called of Cadits which serves it as a boundary by the extremity east of the aforesaid Town of Pensacola, on the west by the rial of 113 Paris feet between the burying ground and the suberb of gardens and afterwards by vacant lands, on the north by lands belonging to the Royal domain and on the east by the stream called Texar.

I certify the foregoing to be agreeable to the Spanish surveys, Pensacola, Dec. 23rd, 1835.

JOSEPH E. CARO,
Keeper Public Archives West Florida.

232 [Plat of Land.]

Defendants offer the American papers of State, page 103, number 46, which is set out in words and figures as follows:

Exhibit 19.

Number, 46; by whom claimed, John Chabeaux; original grantee, Gabriel Rivas; nature of claim, grant; date of cl., November, 1806; number of arpens, 300; where situated, Bayou Texar; by whom issued, Intendant Morales; when surveyed, 2nd Oct., 1806; by whom surveyed, cleared and cultivated, Vincente S. Pintado, from 1806 to 1810.

Defendants offer the Acts of Congress of April 22nd, 1826, page 156, United States at large, volume 4, which is set out in words and figures as follows:

"*Exhibit* 20."

Chap. XXIX.—An act to confirm the reports of the commissioners for ascertaining claims and titles to lands in West Florida, and for other purposes:

(a) Be it enacted by the senate and house of representatives of the United States of America in congress assembled, that all the decisions made by the commissioners appointed to ascertain claims and titles to lands in the District of West Florida, made in favor of claimants to lands and lots in said district, contained in the reports, opinions and abstracts of the commissioners, which have been transmitted to the secretary of the treasury, according to law, be and the same are hereby confirmed.

Sec. 2. And be it further enacted, that all the reports, abstracts and opinions made and forwarded by the two commissioners in said district, subsequently to the first day of January, eighteen hundred and twenty-five, the period at which that board expired by law, be and the same are hereby recognized as valid and confirmed as aforesaid and the said commissioners and their secretary shall be entitled to receive the same compensation as they were authorized to demand by law, prior to that day, up to the time at which the receiver and register took possession of their records, in obedience to an act of the third day of March, eighteen hunderd and twenty-five, entitled: "An Act to Extend the Time for the Settlement of Private Land Claims in the Territory of Florida."

233 Sec. 3. And be it further enacted, that the Spanish claims contained in special reports, from one to thirty,

reported in obedience to the fourth section of the act of congress, approved May eighth, eighteen hundred and twenty-two, entitled: "An Act for Ascertaining Claims and Titles to Lands in the Territory of Florida," be and the same are hereby confirmed to the claimants in possession.

Sec. 4. And be it further enacted, that the claims to lots in report and abstract K, recommended for confirmation as equitable titles, with the exception of the last ten, be and the same are hereby declared valid and confirmed, and the claim of the Catholic inhabitants to a lot on which the church stands be and the same is hereby confirmed, to them for that use so long as it is occupied for that purpose.

Sec. 5. And be it further enacted, that the claims contained in the report of the receiver and register, made to the secretary of the treasury, in obedience to a law of the last session of congress, dated the thirteenth day of July, eighteen hundred and twenty-five, be and the same are hereby confirmed.

Sec. 6. And be it further enacted, that the claim of Francisco and Fernando Moreno, near Fort San Carlos de Barancas, shall be so located as not to interfere with the grounds reserved by the laws and ordinances of the Spanish government for forts, nor with that which has been lately selected for a navy yard and naval depot, by the navy commissioners, and approved by the President of the United States.

Sec. 7. And be it further enacted, that the claims of lots in report L, with the exception of that on the square Ferdinand Seventh, be and the same are hereby approved and confirmed, so far as the United States have any title to the same, without prejudice to the rights to the corporation; and the lots reserved for market house and other public uses, in the plan of the constitutional cabildo, are relinquished and confirmed to the Corporation of Pensacola; and the lots reserved and granted for church parish, vicar school and custom house, are respectfully set apart and confirmed for the object set forth in the decrees of said cabildo, so far as the United States have any title to the same, without prejudice, as aforesaid: provided, that no claim on the public squares of Seville, Ferdinand Seventh, and the square and garden on which the court house stands, as laid off in said plan of the cabildo, shall be allowed or recognized as valid by this act; and provided also, that the confirmation of all the said claims provided for by this act, shall amount only to a relinquishment forever on the part of the United States of any claim whatever to the tract of land so confirmed or granted.

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Sec. 8. And be it further enacted, that the lands fronting Pensacola bay, from the mouth of the Big Bayou to a line below Tartar Point, and thence back to the bayou, se-

lected by the navy commissioners, and all the lands fronting said bay, and for one mile back, as far as the Grand Lagoon, shall be reserved from sale or location, for the use of the navy yard or depot, and for other public works of the United States.

Sec. 9. And be it further enacted, that the proper accounting officers of the treasury department be and they are hereby authorized to receive and adjust the accounts of the commissioners appointed to ascertain claims and titles to lands in East and West Florida, for the contingent expenses of said commissioners, and to the same out of any money in the treasury not otherwise appropriated.

Approved, April 22, 1826.

Defendants offer a certified copy of a translation of a deed from Gregorio Caro, certified by Felo La Rua, keeper of the public archives of West Florida, to James Fitzsimmons, Samuel Smyth and John Chabeaux for said tract of land.

Which document is set out in words and figures as follows:

Exhibit 21.

Deed, Gregoria Caro to Fitzsimmons, Smyth and Chabeaux, page, 90, lot of land containing three hundred arpens.

Know all men by these presents that I, Gregaro Caro, an inhabitant of the City of Pensacola, do grant that I sell really and in fact to James Fitzsimmons, Samuel M. Smyth and John Chebeaux, a tract of land containing three hundred arpens superfices situated at one mile from the town in the Plaza known by the name of the old brick yard, which tract of land I purchased at a public sale made of the estate of the late Gabriel de Rivas deceased, on the 21st instant, and I sell the same to the above mentioned Fitzsimmons, Smyth and Chebeaux free from incumbrance or mortgage, none appearing on the records in this office for and in consideration of the sum of five hundred and seventy-two dollars cash, to me well and truly paid in hand by the said purchasers, the receipt of which I do hereby acknowledge, and myself therewith fully satisfied and contented, by virture of which I relinquish
235 and divest myself of the right of the property, possession, interest, claim and demand, which over the said three hundred arpens of land I had and held, I do cede, renounce, release and transfer the same unto the purchasers, their heirs or assigns in order that they may as true owners thereof enjoy, possess, sell, alienate or dispose of the above premises as they may judge proper.

In virtue of this deed which I make in their favor, in token of real delivery whereby it is shown that they have acquired the possession of the same without the necessity of any fur-

ther proof, with which I relieve him, and I bind myself to the evictions, security and warranty of this sale in due form of law, with my property present and to come with power and authority to his majesty justice and claim of guaranty granted hereby as inserted to cover it to be executed, and in order to compel me to its fulfillment, we, the aforementioned, James Fitzsimmons, Samuel M. Smyth and John Chebeaux, being present at the making of this deed, do accept it in our favor, receiving therefrom the tract of land as purchased for the sum and agreeably as hereunto sold to us, acknowledging the same to be placed at our disposal, and we grant a formal receipt and discharge in due form, in testimony whereof the present is done at the City of Pensacola on the 22nd day of Oct., 1817. I, Don Jospeh Masot, Colonel of the Royal Corp [Corps] of Artillery, Civil and Military Governor of the Province of West Florida, do hereby certify that I know the parties who have thus acknowledged and signed the foregoing, being instrumental witnesses, Francis Comido, Eusebio Cornido and Antono Molino, and of assisting witnesses for want of a regular clerk, Domingo Sausa and Joseph Cavallos, who hereunto sign with me, Gregario Caro—James Fitzsimmons,—Samuel M. Smyth,—John Chebeaux,—Joseph Masot,—Domingo Sausa, and Joseph Chevallos.

The claim of John Chebaux to three hundred arpens of land on Bayou Texar was then taken up for examination, and the following title papers and testimony exhibited in support thereof, to-wit:

A copy of a plat and certificate of survey, executed by V. S. Pintado, surveyor general on the 2nd and 3rd and returned on the 6th Oct., 1806, certified by the same on the 27th of Oct. 1806, survey executed by order of the Intendant Moralies, on the 31st July, 1806, in favor of Gabriel de Rivas, also an original grant or title in form made to Gabriel de Rivas by the Intenda-t Moralles, countersigned by F. G. Ar-
236 royo, secretary, and dated the 10th of November, 1806, also a copy of a mesne conveyance from Gregario Caro to John Chebeaux, James Fitzsimmons and Samuel M. Smyth, passed before Governor Masot, and the assistant witnesses, Sausa nad [and] Cevallos, on the 22nd of Oct., 1817, certified to be a true copy by the same persons on the same day. This deed recited that Caro purchased at a public sale of the estate of Gabriel de Rivas, deceased, on the 21st of Oct., 1817. Also a copy of a mense conveyance from James Fitzsimmons to John Chebeaux of his undivided third part of said land, passed before Governor Callava and the assistant witnesses, Sausa and Caro, on the 22nd of November, 1819, certified by the same

persons on the 11th of Dec., 1819. Joseph E. Caro proved the signatures to the foregoing title papers.

Fernando Moreno, being duly sworn, said that Gabriel de Rivas commenced improving the said tract of land between four and six months after he obtained the grant, continued the cultivation about three years, and had about four acres cleared, enclosed and in cultivation, and further saith not.

STATE OF FLORIDA,
Escambia County.

I, F. E. de la Rua, keeper of the public archives of West Florida, hereby certify that the foregoing three pages and part of this page contain a true copy of deed from book "B" of deeds, page 90, and of proceedings before U. S. commissioner from 1st volume, page 332, as the same remains of record in my office.

Witness my hand and private seal, having no seal official by loss thereof, this 16th day of May, A. D. 1885.

F. E. DE LA RUA,
Keeper of Public Archives, West Florida.

Defendants offer a certified copy of a deed from James Fitzsimmons to John Chabeaux for the same land, which document is set out in words and figures as follows:

237 *Exhibit* 22.

Deed, Fitzsimmons to John Chabeaux.

Know all men by these presents, that I, James Fitzsimmons, resident in this town, do hereby grant, bargain and sell, really and in fact unto the adjutant major of the Regiment of Louisiana, Cirilo de Morant, as attorney in fact of John Chebeaux, of the City of New Orleans, the undivided third part of a tract of land of three hundred arpens which I purchased in copartnership with Samuel M. Smith and the said John Chebeaux, as appears by deed of sale passed in this office bearing date second of October, one thousand eight hundred and seventeen, and I sell the said undivided third part of the land above mentioned to the aforesaid John Chebeaux, free from incumbrance or mortgage, none appearing on the records of this office, for the sum of three hundred dollars to me in hand well and truly paid by the said purchaser, the receipt whereof is hereby acknowledged, whereby I relinquish all my right of property, possession, interest, claim and demand, which over said third part of land I had and held, hereby ceding, renouncing and transferring the same in favor of the purchaser, his heirs and assigns, in order that he may as true owner

thereof, enjoy, possess, sell or dispose of the same at his will, by virtue of this deed, which I make in his favor in token of real delivery, by which it is seen that he has required possession of the above granted premises without requiring any other proofs, from which I relieve him and bind myself to the eviction, security and warranty of this sale in due form of law, with my property, present and to have, granting hereby as inserted the clause of guarantee which empowered the justices to cause it to be executed, in order to compel me to its fulfillment, and I, the aforesaid Cirilo de Morant, as attorney in fact of John Chebeaux, being present at the making of this deed, do accept it in behalf of said Chebeaux, receiving therefrom the above undivided third part of the land aforesaid as purchased, for the sum and agreeably as sold to me acknowledging its being placed at my disposal and in virtue thereof do grant a formal acceptance and discharge in form. In testimony whereof, the present is done at Pensacola, on the 22nd day of November, one thousand eight hundred and nineteen. I, Don Joseph Maria Callava, political and Military governor of the Province of West Florida, do hereby certify that I know the parties who have thus acknowledged and signed the foregoing, being instrumental witness John de la Rua, Vincente Batalonge, and Joseph Cevallos,
238 and for want of a notary public those who sign with me, James Fitzsimmons, Cirilo de Morant, before me, Joseph Callava,—Domingo Sausa,—Joseph E. Caro.

STATE OF FLORIDA,
Escambia County.

I certify that the foregoing is a true and correct copy of a deed between the parties therein named as the same remains as record in my office in Public Archive Book "B", pages 278 and 279.

Witness my hand and private seal, my seal official being lost or misplaced, this May 16th, 1885.

[SEAL] F. E. DE LA RUA,
Keeper of Public Archives of West Florida.

Defendants offer a certified copy of a partition between John Chabeaux, Louis de Conde Morant and Lorenz Millaudon, which document is set out in words and figures, and marked Exhibit "27," hereto attached.

Mr. Blount, counsel for defendants: I offer in connection with the offers, the protocol, which I have in my hand, and I will give the names of the beneficiaries; one is Thomas Marshall, and the other is Joseph Marshall; I offer it for the pur-

pose of showing the authenticity of the proceedings relating to this particular tract of land, because found at the same place, signed in large part by the same parties and having the same general appearance; which document is set out in words and figures as follows:

"Exhibit 24."

1814. Testament-a, de Thomas Marshall y Joseph Marshall.

"Exhibit 24."

In the name of God, Amen. I, Thomas Marshall, of the Bay of Pensacola, planter, being very sick and weak in body, but of perfect mind and memory, thanks be given unto God, calling unto mind the mortality of my body, and knowing that it is appointed for all men once to die, do make and ordain this my last will and testament, that it is to say principally and first of all I give and recommend my soul to God, that gave it, and my body, I recommend to the earth, to be burried in decent, Christian burial, at the discretion of my
239 heirs, nothing doubting, but at the general resurrection I shall receive the same again, by the power of God, and as touching such worldly estates, wherewith it is pleased God to bless me with in this life, I give, demise and dispose of the same in the following manner and form:

First. I give and bequeath to my daughter, Molly, ten negroes, viz: Old George, his wife and three children, Londo, George and Andrew. Also, I give to my son, Joseph, two negroes, young Charles and Jenny. Also, to my son, William, two negroes, Big Charles and his wife Solly. Also, I give to my son, James, two negroes, Sam and his sister, Judy. Also, I give to my son, Benjamin, seven negroes, Edmund and his wife and child, Levy, his wife and two children. Also, I give to my son, Henry, six negroes, Dick and his wife and four children. Also, I give to my son, David, eight negroes, Minty and five children, and Peter and Liddy. Also, to my son, Thomas, six negroes, Big George, his wife and two children, Cloe and her child. Also, I give and bequeath to my brother's son, Joseph Marshall, four negroes, Max and his wife, Benoh, Flora and Mitshel, I also give my son, Mathew, six negroes, Tom, Judy, Tompson, Miller and Noth—

The money arising from my tar kiln, which is now on hand, and nearly finished, I wish to be distributed equally among my black people, after paying for the tar barrels. And I do, by this my last will and testament, set free three of my black people, this — Limus, Ned and little Billy, therefore none of

my heirs must have no claim to title to them whatsoever. My plantation I do not leave more to one of my children than another, but to any of them that may choose to live on it, or to all, if they live on the place. The ready money I have, after all my debts is paid, I wish to be equally divided amongst my children, and I do hereby constitute, make and ordain my brother's son, Joseph Marshall, my sole executor of this my last will and testament. In virtue whereof, I have hereunto set my hand and seal, this 18th day of October, in the year of our Lord one thousand eight hundred and fourteen.

THOMAS MARSHALL.

Signed, sealed, published, pronounced and declared by the said Thomas Marshall, as his last will and testament, in the presence of us, whom in his presence, and in the presence of each other, have hereunto subscribed our names.

WM. A. BAKER,
JAMES HALL,
THOMAS LONMAN.

240 En la Plaza de Panzacola, a diez y nueve dias del mes de Noviembre de mil ochocientos catorce anos, el Sr. Dn. Mathew Gus Manrique, Gobernador, Politico y Milton, le esta provincia..... Fuerto, a cota le paron un oficio del Son Don Martin le Madrid primer Nexodon, le esta Ayuntamiento Qe. exenco las funciones le Alcalde.... qe., enfermedad del propretario habersele, todo parte haber fallendo en su Havista el havitante Dn. Tomas Marshall como a duos leguas de esta Plaza, sin sabeear haya echo, Boluntad, Testamentaria con de si es casado, de so Heno, y solo de qe. bulgarmente, se dice tener, alguno, hijos, momos, y necesetandose el, poner, a, salbo, los vienes qe. haya, dejado.....su, fallecimiento pa. qe. este, tribunal, en, ningn. tiempo que comprometido despues qe. el, citado, S, Alcade, Dn. Martin de Madrid, con union de los dos testigos atestencia, Dn. Tomas Posie de Rioboo y Dn. Domingo Sausa, con el interprete Publico de lo Idismo Ingleso, Dn. Pedro de Alba, an setiado, los Sargentos de Granaderos, Joseph Guerra, y dos Granaderos pason a la habitacion lo citado defunto, a fin de Que se reconozea entere sus papeles, o de los mismos qe. han quedado al cuidado de la Havetar y vienes si ha o longado Testamento el que reconocendosesin entigo y de los que prebiene la Ley puido ser bolidos procedo ano opertuno son malegando en segundo, los Inbentanios..... juramento para que los interesa dos o.....su ellos declaren los que son de su pertenencia; can aper.....muestras de qe. si mo manifestaron todo, no siendo por olvido involuntario ser con castigados con

todo el posano a su Senoria, pa. la determinacion que corresponda, lo qe..... este su auto del lo probehio mando y firmo.

MATHEW G. MANRIQUE,
RAFAEL SAES.

DOM. SAUSA.

Imediatamente nosotros los Intascretos testos. lo ontencion pasamos a la morada lat—. 3 Dn. Martin de Madrid. 17 le.... enteramos del auto of proceda y.... de asi haberlo certificado, damos fe.

THOMAS PASSE DEL RIOBOO,
DOMING. SOUSO.

En la citada Plaza, el Sr. Dn. Martin de Madrid, acompanado de nosotros los testigos de asistencia y de Dn. Pedro Gilky para haber echo constar el Publico Dn. Pedro lo Alba hallarse enfermo, y estando en su.....todos juntos, se abio juramento a los teso. indicados testos lo asistencia...Interprete de fidelidad y todos prometieron una..... de bienificanto y onorden sigilo lo que toque a cada uno le su parte, y la firmaron conmigo, lo qe. certifico.

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MARTIN DE MADRID,
DOMO. SOUSA,
THOMAS PASE RIOBOO.

Con le entestamento....S. dispuso qe. pa. nosotros, los testigos del asistencia se solicitara una embanca— comoda pa. transferir ala expresada Norvita con todos los individuos, qe expresa el auto qe. antecede, lo qe. berificomo alguelanda lo del precino lo esta Plaza.....con su persona y dos remonos a varon u para...vila Peroque y quatro...cada indibiduo y pa. qe. asi conste mando se.....damos fe.

MADRID,
D. SOUSA,
THOMAS PASE DE RIOBOO.

Inmediatamente el Sr. Dn. Martin de Madrid, en complimento al auto del Sr. Comandante de la Prov., paso acompanado de nosotros los test. de asistencia y del Interprete Dn. Pedro Guilvy Sargento, y Granaderos a la citada habitacion y citando en ella ser curado...los indibiduos que luego se mencionaran, qe. efectivamente habia fallecido el mencionado Dn. Tomas Marshall a quien dieron sepultura a trescientos pasos, poco mas o menos, de su Hoveted el dia primero del

corriente, y para qe. todo conste, lo firma con nosotros—qe. damos fe.

MADRID,
PEDRO GILLE,
THOMAS PASE DE RIOBOO.
DOMO. SOUSA.

Hoy dia veinticuatro, siendo con las ocho de la manana, hora en que se hiba a preceder..las declaraciones de los testos, que se hallan subscretos en el testamente de Dn. Tomas Machell, llegaron.....barias partes abria de que benia una partida de indios.....la Navitacion con animo de robar lo que hubiera en ello...como motibo habiendo cada uno puestose en defensa, no se pudo berificar dicho acto, y para qe...conste, dispuso el Sr. Alcalde qe. para qe. todo conste, se pusiese..diligencia qe. qe. firmo qe. damos fe.

MADRID,
THOS. PASE RIOBOO,
DOMO. SAUSA.

242 Al Siguiente Dia, veinticinco, habiendo sido inexactas las noticias que se dieron al referido Sr. Alcalde, hizo comparacer ante si, al testigo Guillermo.....a quien dela senos recibo juramento, bsp. la H-tixeoin qe....Prefectaba, sobre el qual habiendo sido interrogado por el interprete Dn. Pedro Gilby si habia sido uno de los qe. Han firmado en el Testamento qe. se le pone manifesta y si es la firma de su puno y letra, qe. estampo cuando el citado difunto en esta Hovetad hizo su Testamento, como igualmente si es la firma que acostumbraba hacer el difunto.....qe. en todo..... a exsepcion si puede haber cambiado la letra, en virtud de su enfermedad, por qe. le temblaba el pulso, y responde quel dicha de la berdad, segun expresion el Interprete, en que, se afirma y ratifico despues, que la....todo....este y lo firmo, con oho S. de qe. damos fe.

WM. A. BAKER,
PEDRO GILLY, MARTIN MADRID,
DOMO. SAUSA. THOM. PASE RIOBOO.

Incontinente, el precetado Sr. hizo comparecer ante si. a James Hall, segundo testigo de los que aparecon subscritos en el que se dose Testamento a quien..ante nosotros, y por medio del Interprete, se le recibio juramento bajo la pena y de la que crehe en la religion del Interprete, qu asi lo ofrecio, y habiendoselo preguntado..el Interprete, si os cierto ha firmado en el testamento que atango en esta havitad, el difunto Tomas

Mochell, y si esto lo llama on efecto como en mismo si estaba presento cuando la firma de este, y habiendo dicho que si se le puso de Manifesto al qe. reconociendola con toda atencion dijo ser el mismo qe. otorgo a su presencia de la defrida como asi mismos las de las firmas que tienen delante son de sus punos y lotras..responde hegun dijo el interprete de quo en ello se affirma y ratifica...ser en todo la verdad y la firma conde el Sr. el Interprete y nosotros qe. damos fe.

JAMES HALL,
MARTIN E. MADRID, PEDRO GILLOT,
THOS. PASE RIOBOO. DOM. SOUSO.

En el mismo acto, hizo el oho Sr. comparecer a Tomas....a quien.....nosotros y por medio del interprete se le recibio juramento segun el rezo de su religion, ofrecio decir verdad de lo qe. supiero y fuese preguntadoy habiendo sido sobre si firmo algun papel que le presento el difunto Dn. Tomas Marshall y si....si dicho que hizo su testamento y ultima voluntad y habiendo respondido que si se manifesto y dicho ser difunto
243 como lo certifica que lo dicho es la berdad alargo del juramento qe. ha prestado sejun dijo el Interprete en qe. se afirma y ratifica todo que la fue esta su declaradad—por el citado interprete, y lo firmo con dicho Sr. el interprete..y damos fe.

.....
MARTIN DE MADRID, PEDRO GILLOR,
THOM. PASE RIOBOO. DOM. SOUSA.

Consecutivamte despues, oho Sr. se procedieron a los inventarios prebendo y estando presente el sobrino del difunto albacea.....Mochell s juramento en forma se mando por dicho Sr. declare cuanto posehise el difunto y en co.....oho fallecimiento exprecio lo siguienpor medio del Interprete: primeramente el establecimiento de lo manilo con su para prae Tres Almos-y veinte y una cabanas para los esclavos de y los Utiles para su labranza, Idem, dos mulas y dos caballos, Idem, Item, cabezas de Ganado Vacuno,—Item veinte idem, idem, Lanar,—Item noventa Barr. de Modle en espiga.

Item, veinte Barrs. de Chicharos.

Item, cinquenta idem de Arroz en paja.

Item, sesenta idem de potos de Mamto.

Item, un Telar Maquina pa. el Algodon.

Item, un bote pa. el servicio en los emboros.

Item, los esclavos de ambos sexos que constan en el Testamento, qe. son los de donativo a sus Herederos.

Item, mas, sus prisos de esclavos llamados Laude. Tupeder. Sesy y Tres Puios llamados Mary Sophy y Ambly.

Item mas, sabe y le consta le es deudor Dn. Pedro Filiben de la Camade.....y cinquenta pesos segun consta de obligon.

Item, el difunto Dn. Anto. Montero setenta y un pesos, idem.

Item, sabe que su difunto Tio es deudor a la casa de Dn. Juan Tomerarity pero que ignora la cant.

Item declara que se encunera a su fallecimiento Nuebe cientos y citenta y cinco pesos en plata, y treinta y una onzas de oro.

P. S. Por no haber qe. encontrado otra cosa al fallecimiento de oho Difunto, su emborso de qe. por algun olvido involuntario no se haya acordado en este acto ofrecio el manifestar lo qe. sea en tiempo oportuno. haciendo constar igualmente al Tribunal que la pora ropa de su huso la quemo con lo que se concluyo este ecto queando todo al cargo del citado Sr. Dn. Joseph Mochell con los condicions que debora tener el todo a disposicion del Sr. Gov—. en caso de que si le requieren. Pues a sus lo mando y firmar el citado Sr. Alcalde, Albacea, Interprete y nosotros los testos, de asistencia de qe. damos fe.

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JOSEPH MARSHALL,
PETER GILLOT,
DOM. SOUSA.

MARTIN DE MADRID,
THOM. PASE DE RIOBOO.

Nota: Que habiendo concluido el Imbentario segun el prevo el Albacea no tener dosa cosa que manifestar en la..... por no consideron haya algunos actos que tenga como a..... la estos en el presente despues oho Sr. quere pusuere nota para constancia y lo firmo de qe. damos,

DOMO. SOUSA.

MADRID,
THOMAS PASE DE RIOBOO.

Otra: Que se conclya esta deligen— a las como— de la tarde del resulerg sin de como y qe. comte mando el expresado de qe. damos fe.

DOM. SOUSA.

MADRID,
THOS. PASE DE RIOBOO.

Concludoeste act refles-anr debia manifestar igualmente que tenia hacer constar que el Difunto mucho tiempo antes de su fallecimiento hama echo donderan amilupas por terrabe— y qe pa su comprob ante poeseute los siete Documtos. qu le hizi y pide qe. traducedos qe. sean al castela sele debuelban originales

pa....quando en todo tiempo y pa que asi conste mando oho Sr. se ponen...delegencia qe. firman qe. damos fe.

JOSEPH MARSHALL,
MADRID, PETER GILLOT,
THOMAS PASE RIOBOO. DOM. SOUSA.

Plaza de Panza. a los veinte y ocho dias del mes de Nob-e. de mil ochocientos y catorce el Senor D Martin de Madrid Juez comicioanado para mas diligencias para comp ano de denorotno —los testigs de cuenta a las casas de Gob-no. mediante estos concluido su comicion e hizo exibicion de estas diligencias al Sr. Comandte. de esta Prov-a. compuestas de once foxas ubitas sin su cubierta como igualmente siete documentos que segun se dice son de los donativos que hizo el difunto a sus hijos y pa que conste mando dho Sr. se puisere por dile-a. que firmo de que damos fee.

THOS. PASE RIOBOO. MARTIN DE MADRID,
DOM. SOUSA.

Panz-a. 28 de Nob de 1814.

Por recibidos estas diligen. traduzcanse por el Inter-
245 prete nombrado Dn. Pedro Gilkes el que se dise testamto. que otorga el difunto Tomas Marshall a sus herederos y los siete documentos que se mencionan (que) se hayan en idioma ingles y de todo lo cual son leer diligencias por la providencia que corresponda.

DOM. SOUSA. GONZALES,
RAFAEL SAEZ.

En el mismo dia nosotros los testigos de asistencia que.... on este Coberno los hicimos saber a Dn. Jose Marshall como Albacea que se dise ser del difunto su tio D Tomas Marshall y de quedar entoradosdamos fe.

SOUSA. SAEZ.

En el mismo dia nosotros los expresados testigos de asistencia en cumplimiento al decreto que precede pasamos a la morade de D. Pedro Guilkies Interprete que fue nombrado por el Senor D. Martin de Madrid para pto seguimiento—estos diligencia el que enterado de que debia traducir el testamento y documentos que se proviene ofrecio hacerlo segun su real saber y enterner y que desde luego ofrecia boxo el Juramento que fue debidamente presto hacerlo fiel y legalmente y lo firmo con nosotros que damos fe.

PEDRO GILKES,
DOM. SOUSA. RAFAEL SAEZ.

Dn. Pedro Gillke, Vecino de esta Plaza en vista de la comision que le es conferida por el Sr. D. Martin de Madrid para servir de interprete provisional por enfermedad del propieta- viene en idioma ingles que en ello le expresan en lo fermo....

Traduccion Del Testamento.

de F 1 v2

En el nombre de Dios, Amen. Yo Thomas Marshall habitante de la Bahia de Panzacola, hallandome bien enfermo y debil del cuerpo pero en mi sentido perfecto y memoria gracias a Dios acordandome de la mortalidad de mi cuerpo y considerando que esta ordenado pa todos pos hombres una vez morir, mando y ordeno esto mi ultimo Testamento y voluntad es a decir primeramente de todo doy y recomiendo mi alma a Dios que me la dio y mi cuerpo mando a la tierra para enterrarse cristianamente a la disposicion de mis herederos no dudando a la resurreccion general vuelva a recibir el alma por la disposicion divina tocante a los bienes de este mundo qe. Dios me ha dado por su voluntad en esta vida y dispongo
246 de lo mismi en la manera siguiente: primeramente dono y lego a mi hija Molly cinco Negros nombrados el viejo Jorge, su mujer y tres hijos London, Jorge y Andrew.

Item, a mis hijo Jose dos Negros llamados el joven Carlos y Gomv.

Item, a mi hijo William dos negros, Carlos el grande, y su mujor Solly.

Item, a mi hijo James, dos Negros, Sam y su hermane Judy.

Item, a mi hijo Benjamin siete Negros, Edmundo su mujer e hijo Levy y su mujur con sus dos hijos.

Item, a mi hijo Henry seis Negros Dick y su mujer con cuqtro hijos.

Item, a mi hijo David ocho Negros Minty con cinco hijos, Peter y Diddy.

Item, a mi hijo Thomas seis Negros, el grande Jorge, su mujur y dos hijos Chloe y su hijo.

Item, doy y lego a mi sobrino Jose Marshall, quatro negros nombrados Max, y su mujer Renoh, Flora y Miguel.

Item, a mi hijo Mateo seis Negros, Tomas, Judy, Thompson, Milly, Amy y Nott.

El Dinero que produzca el horno de Alquitran que esta quaso al concluir quiero sea distribuido part guales partes a mi gente de color despuesde haber pagado los barriles de su emboce.—Tambien quiero que por este mi Testamento ultimo postrimera voluntad, quedan libres tres de mis esclavos nombrados Limus, Ned y Billy el chico, de manera que por ningun

de mis herederos se les puede comtrudecir on reclamar en manera alguna otra libertad.—Mi hebitacion no la dexo a uno mas que a los otros de mis hijos, pero alguno de ellos o a todos, si quieren habitarla queden.....vorificarto.—El dinero efectivo que tengo despues de pagar todas mis deudas es mi voluntad de repartir en iguales partes entre mis horederos y quiero por esto..... hacer y ordeno a mi obrino Jose Marshall por solo mi unico Albacea Testamentario y administrador de esta mi ultima voluntad y testamento y para constancia and atestiguar lo executo de mi puno y dello a los diez y ocho dias de Octubre en el Ano de Nuestro Sor. Jesucristo de Mil Ochocientos Catorce. Thomas Marshall.....

Firmado, solado, publicado, pronunteciado, y declarado por Thomas Marshall como la ultima voluntad y Testamento en presencia de nosotros que en su presencia y presencia unos de otros subscribimos nuesaros nombres. Wm. A. Baker.—James Hall.—T.....

247 *Traduccion Alu Documento No. 1.*

A toda persona quien la presente vieren sepan como yo Thomas Mochell hago saber que en la Nacion Crik— y en el vilage Coquita.., on consideracion al amor buena voluntad y afeccion que tengo a mi hijo Benjamin de la misma nacion y vilage, he dado por la presente, a otro Benjamin y a sus herederos administrados dos Negros, Base y Bonbesco tanbien cinquenta cabezas de danado bacuno pa el y sus herederos desde ahora en adelante pa su uso absolutamente exepto de condiciones alguna y pa. constancia y atestiguar lo executo de mi puno y sello a los dos dias de Octubre de Mil ochocientos nueva. Thomas Marshall, firmado y sellado en presencia de Josif Marshal.

Documento No. 2.

A toda persona que presente vieren sepan como yo Thomas Marshall hago suber que el Nacion Crik, y en el vilage Coquita en sideracion buena voluntad y afecion que tengo a mi hijo James de la misma nacion y vilage he dado pro la presente a otro James y a sus herederos y a sus administradores dos negros, Joe y su hermano Moniro tambien cincuenta cabezas de ganado bacuno pa. el y sus herederos de ahore en adelante pa su uso absoluto exepto de condicion alguna y para constancia, y atestiguar lo executo de ni puno y sello a los dos dias de octubro, de Mil ochocientos nueve. Thomas Marshall, firmado sellado y declarado en presencia Jose Marshall.

Documento No. 3.

A toda persona quien la presente viere sepan como yo Thomas Marshall hago saber que en la nacion Crik y en el Vilage Coquita en consideracion del amor, buena voluntad y afeccion qu. tengo a mi hiji Mathew de la misma Nacion y vilage, he dado por la presente graciosamente a art Mathew y a sus herederos y administradores, dos Negros Mulol y su nieta Mamy tambien cincuenta cabozas de ganado bacuno pa el y sus herederos desdo ahora en adelante pa su uso absoluto exepto de condiciones alguna y pa constancia y atestiguar, lo executo de mi puno y sello a los dos dies de Octubre de mil ochocientos nueve. Thomas Marshall, firmado, sellado y declarado en presencia de Joseph Marshall.

248 *Docunt. No. 4.*

A toda persona quien la present viere sapan como yo Thomas Marshall, hago saber que en la Nacion Crik y en el vilage, he dado por le presente a dicho Henry dos negros peaffeccion que tengo a mi Hijo Henry de la misma Nacion y vilage, he dado por le presenta a dicho Henry des nefros petor y Elvy tanbien cincuenta cabozas de ganado bacuno pa el y sus herederos desde shova en edelante para su uso absoluto exepto de condicion alguna y pa constancia y atestiguar, lo executo de mi puno y sello a los dos dias de Octubre, de mil ochocientos nueve— Thomas Marshall—Firmando sellado y declarado en predencia de Joseph Marshall.

Dcumto. No. 5.

A toda persona quien la presente viera sepan que yo Thomas Marshall hugo saber que en la Nacion Crik y en el vilage Conita en consideracion al amor buena voluntad que tengo a mi hijo William, de la misma Nacion y vilage, he dado por la presente al ort William y sus herederos y administradores, dos negros Bill y su mujer Mary tenbien cinquenta cabozas de ganado vicuno pa el y sus herederos desde ahora adelanto pa su uso absoluto exepto de condicion alguna y pa constancia y atestiguar, lo executo de mi puno y sello a dos dias de Octubre de mil ochocientos nueve.—Thomas Marshall, firmado y sellado y declarado en presencia de Joseph Marshall.

Docuto. No. 6.

A toda persona quien la presente viera sepan que yo Thomas Marshall hago saber que en la Nacion Crik y en el vilage Cor-

vita on consideracion al amor, buena voluntad y afeccion que tengo a mi hijo Thomas de la misma Nacion y vilage he dado por la presente a dicho Thomas y a sus herenderos y administradores, dos Negros Lissy y su hermana presilla tanbien cinquenta cabezas de genardo bacuno pa el y sus herederos desde ahora en adelante pa su uso absoluto exepto de condicion alguna, y para constancia y atestiguar lo executo de mi puno y sello a los dos dias de Octubre de Mil Ochocientos nueve. Thomas Marshall, Firmando sellado y decalrado eno presencia de Joseph Marshall.

Docut. No. 7.

A toda persona quien la presente viere sepan como yo
249 Thomas Marshall hago saber que en la Nacion Crik y en el vilage Corvita, en consideracion al amor, buena voluntad y affeccion que tengo a mi hijo David de la misma Nacion y vilage, he dado por la presente, graciosmente a dho David y a sus herederos y administradores dos Nedors Elisa y su hermane Barbarie tamnien cinuuenta cabezas de ganoda becuno pa el sus horedeors desde ahora en adelante pa sus uso absoluto exepto de condicion alguna y pa constancia y atestiguar lo executo de mi puno y sello a los dos dias de Octubre de mil Ochocienso nueve. Thomas Marshall—Firmado sellados y declarado en presencia de Joseph Marshall.

Cuya Traduccion he hecho en virtud de la comision que me ha sido conferida, fiel y legalmente segun mi saber y entender y pa que conste la firmo en Panzacola a 29 de Noviembre de 1814.

PEDRO GILLKERS.

En La Plaza De Panzacola hoy primero de Diciembre de Mil ochocinentos catorce nosotros los testigos de asistencia damos fe de habernos entregado el interprete nombrado pa el curso de esta diligencia, la tarduccion del testamento del difunto D, Thomas Marshall y la do los siete documantos segun se le mando en la prova de veintey ocho del mes pasado y pa que asi conste la ponemos por diligencia.

DOM. SAUSA, RAFAEL SAEZ.

Sor. Gobor. de esta Prova.

Joseph Marshall Albacea testamentario del difunto mi tio Thomas Marshall, como mas haya lugar, en..ante V. S. pareser y que en virtud haberse hecho las informaciones y reconocimientos de las firmas del Testamento y ultima voluntad de dho mi tio por el Sor. Alcalde Martin de Madrid y hallandose estos arreglados, a V. S. piod y suplico se sirva mandar se declare y

execute lo que enel esta disquesto que es justicia que pido con costar pero no proceder de malicia y lo necesan, da.

JOSEPH MARSHALL.

Vist Panzacola, 1ro de Dbre., 1814.

Vistas estas diligencias que ha practicado el Alcalde comisionado Dn. Martin de Madrid y resultando de ellos que el difunto Dn. Thomas Marshall otorga su Testamento en diez y ocho de Octubre delcorrte ano en su habitacion seis leguas distantes de esta Plaza segun se evidencia por las declaraciones subministradas por los testigos que han subscrito en el personas asoloriados y habitadores de la referida habitacion que estando, debidamente reconocida la integridad del pligo se declara por Testamento solemne y legitimo de Dn. Tomas Marshall, los cloinulos y desposisiones qe. se incluyen que traducido corre desde fe B, hasta ..... insertese todo lo obrado en el protocala corriente de instrumentos publicos dandosele al albacea los testimonos que pide a fin que pueda proceder a dar complimento a las ultimas disposiciones del testador procediendose por el mismo D. Martin de Madrid a poner al Albacea en posecion de todo previa la correspondiente faracion que se haran por dos peritos que deneran nombrarlos mismos interesados agin cuandos que satisfara el nombrado Albacea

DOM. SAUSA, RAFAEL SAEZ.

Tesoreria De Costos comados en estas dilig. segun lo mandado y con arreglo Re ....

Al Senor Gobernador por sus honorarios	
Al Sor. Alcalde D. Martin de Madrid por quatro amt, dobls en los quatro dias qe. se invieteron en el campo	44-6
Suma y para alobte....	47-2

	pesos-rrs
Suma de la buelta.....	47-2
Al Interprete D. Pedro Gilkes por igual razon, y traduccion del testamento y documentos.....	42-4
Alos testigos asistencia por la misma razon que los antecedend tres dilig— escrito y demas ocup— en todo lo a Anada.....	71-1
Al, Sargto do, custodia, y dos Grar—....	8-11
Al patron del a Peraque por el sepisa que y dos demeros	10
Al tonador, por esta ocupacion....	2
Total..... ....180 P ..rrls.	

Cuya so soscion hemos hecho fiel y legalmente segun nues-

tro seol, saber y entendimiento en Panzacola a primero de Diciembre de Mil Ochocientos Catorce.

DOMO. SOUSA. RAFAEL SAEZ.

En le Plaza de Panzacola, a dos de diciembre del corriente ano lo Participamos al Sr. D. Martin de Madrid y de quedar enterado damos fe.

DOM. LAURA. RAFAEL SAEZ.

Delig. En el citado dia estando lista la embarcacion y tropas de auxilio que devia.....to decir al estado Dn. Martin de Madrid como igualmente a los peritos que habian nom-
251 brado los interesados, que se habian suplicado se le diese los quatro hombres y un Sargt. autorizar al Jues comicionado en caso de alguna dificultad que pudieran tener los herederos pasaron estos a la casa de D. Martin de Madrid para que pasase ala mayor breveda a verificar la diligencia de estimacion de la habitacion efectos de ella y esclavos, y que pusiese en posecion de las donaciones que hace en su Testamento el difunto Dn. Thomas Marshall como asi mismo el Albacea y encargandose a este a los Menores y ausentes, y habiendo estas informoda al Senor Comandante de la provincia de que el referido D. Martin de Madrid a quien estaba cometido esta cometida esta diligencia como Juez de que se hallara enformo en cama por cuya razon le inposible de verificarla por lo que dho Senor Comandante mando se cometiete pa evitar alrozos y perjuicios a los intreresados al Subteniente del Rejimiento de la Lusiana D. Jose Preullo quien enterado de la comision que debia practicar la accepto en debida forma y pa que conste todo mando dho Senor se presiese por diligencia que firmo con elcitado Subteniente de que damos fe, nosotros los testigos de asistencia, testos senor no vale,—

DOM. SAUSA. JOSE URONILLO,
RAFAEL SAEZ.

Inmediatamente el Senor D. Jose Nrcullo Subteniente del Regimiento de Infant.—de la Luisiana en compliments de la comicion que se le ha conferido por el Sor Comandante de la Prov. paso a bordo de uno Pirgua que tenia prevenida el Albacea Dn. Jose Marshall acompanado de nosotros los testigos de asistebcia dos vecinos de esta Plaza que llevabos por peritos, estimados Interprete, el Sargento y los quatro Grans. de custodia y embarcados todos en ella, se sigio viaje a la mencionada habitacion que se halla distante seis leguas de esta Plaza y citando en ella dich Senor hizocomparecer ante si a Don Guillermo Baker y a D. Anasrasio Montes de Oca peritos nombrados por los interesados, el primero por parte delos here-

deros y el segundo por la de el Albaceaq handose igualmente y previo el juramento que los reorio de fidelidad sobre sus encargos y habiendo ofrecido y prometido ferificarlo segun su leal saber y entender lo firmaron pa su constancia con dho Senor, de que damos fe nosotros los testigos de asistencia.

WM. BAKER. ANNT. MONTES de OCA.
NSCULLO. RAFAEL SAEZ.
DOM. SAUSA.

252 En el mismo acto el referido Sr. hizo comparecer ante si al interprete comicionado D. Pedro Gilkes a quien por ante nosotros los testigos de de asistencia le reario juramento que hizo segun derecho y enterado de la comicion que debia hacer, y traduccion fiel y legalmente, los que los peritos cerificasera corria igualmte, dos a reconocer a cada herederos y alos esclavos los que el testador en su ultima voluntad les habia legado ofrecio hacerlo y para su constancia la firmo con el expresado Senor y nosotros los referidos testigos de asistencia que damos fe.

DOM. SAUSA. PEDRO GILKES.
TRULLO. RAFAEL SAEZ.

Y siendo las cinco y media de la tarde mando el Senor comicionado se suspendiese esta diligencia pa continuarla al dia siguiente que firmo con el Albacea, Interprete y nosotros los testigos de asistencia que damos fe.

DOM. SAUSA. PEDRO GILKES.
TRULLO. JOSEPH MARSHALL.
RAFAEL SAEZ.

Hallandose el consavido Senor en la referida habitacio en la casa mortoria de D. Thomas Marshall, el dia tres del corriente siendo las ocho de dha manana presente el Albacea, Herederos, Interprete peritos y nosotros los testigos de asistencia se dio principio a la estimacion prevenida en la forma siguiente:

Premeramente se estima la casa a principal por dichos peritos en quatrocientos pesos 400
Item, asi mismo se estiman tres almacenes y veinte y una cabanas de los escalvos para su establecimiento en doscientos cinquenta peso . . . . . 250—
Item, todos los utiles pertenecientes pa el labor de dicha habitacion, treinta pesos . . . . . 30 "
Item, una Maquina para limpiar algodon en ocho pesos 8 "
Item, seis hachas y doce hazadas de mediano servicio en diezpesos . . . . . 10 "

Otem, ocho reses bacunas en quarenta y ocho pesos... 48 "
Item, dos mulas de carro en cien pesos ..... 100 "

Suma y para ala vta ..... 836 "
Item, dos caballos de montira en sesenta pesos ..... 60 "
Item, dos carros de medio servicio, en quince pesos .. 15 "
Item, veinte y dos carneros en quarenta y dos pesos ..... 42 "
253 Item, sesenta barriles de Momotes
Veinte, Idem de Chicharos,
Noventa Idem de Maiz
Cinquenta Idem de arroz en pata
Item, un bote mal a condiciond en cinquenta pesos.. 50 "
Nota
que los renglones que anteceden de Momeitas Chicharos Maiz y Arroz no se estiman por haber representado el Albacea y herederos que era destinado pa la manutencion de los esclavos y familia por cuya justa razon, accedio a ello el Senor Juez comicionado y Suma y para el Frente ..... 1003 "

siendo pasado de las doce dispuso dho Senor se suspendiera esta diligencia pa continuarlas a las tres de esta tarde que firmo con el Albacea, Perotos Interprete no haciendolo los herederos por no saber de que damos fe asistencia

TREULLO. JOSEPH MARSHALL.
WM. BAKER. PEDRO GILKES.
DOM. SAUSA. ANO MOND- de OCA.
RAFAEL SAEZ.

En el propio dia dicho Sor en union de los individuos que consta de la diligencia que paso a la vuelta 1003 "

Suma del a vuelta 1003
antecede dispuso se prosediece ala estimacion y posecion de los esclavos que segun clanenlo de estamento se deben de entregar a los herederos quese hayan presente y con la edad competente quedando asi mismos los demas a cargo y responsabilidad de Albacea los de los menores id ausentes, hento su Negreso por no haber otros efectos que estiman pertenecientes a dicho difunto
Primero se estimaron por los peritos el Negro Jorge de edad de sesenta anos en cien pesos ..... 100—
Item, su mujer de sesenta de cien pesos 100

Suma y para ala bta ..... 1203 "

Suma del frente 1203
Item, el Negro London de diez y nueve anos en doscientos cinquenta pesos ..... 250 "
Item, el mombrado Jorge de catorce a Nos en doscientos pesos ..... 200 "
254 Item, Andres de siete anos en ciento quarenta pesos ..... 140 "

Estos esclavos son legsdos por el testador a su hija Molly segun consta del Testamento a quienes se les entero por el Interprete crande la pertenencia de esta y que quedaban al cargo y cuid do del Albacea hasta el regreso de su legitimo dueno de que se dio por entregado con esta condicion D. Jose Marshall que firmo con dho Senor Interprete de que damos fe.

TRUELLO. JOSEPH MARSHALL.
WM. BAKER. PEDRO GILKES.
DOM. SAUSA. RAFAEL SAEZ.

Suma pa ala vt ..... 1793 "

Suma de la buelta ..... 1793—
Conxecutivamente se siguio la estimacion de los esclavos qe segun clausulas del testamento pertenecian a su hijo Jose.
Primerante el Negro nombrado el joben Carlos de veinticino anos en doscientos sesenta pesos 260
Item, negro Gemy de veinticinco anos en doscientos cinquenta ps. 250
Item, Negro de diez y ocho anos en doscientos pesos.. 200—
Item, la negra Judigen de diez y seis anos en ciento seteta pesos 170
Item, la Negra Maniv de diez anos en ciento cinquenta ps. 150
Estos tres esclavos ultimos pertenecientes segun tstamento a su hijo Thomas el mismo que han expresado el Albacea y herederos hallarse ausente en la Nacion y Pueblo Corvita lo que

Suma y para el frente ..... 2823 "

se hizo entender a los esclavos p rtenecian al susodicho por medio del Interprete y al Albacea de que quedaban a su cargo interin se presentaba su lexitimo duene como lo mismo los dos de Jose que igualmente se hallaba ausente y siendo pasado de las cinco y media de la tarde mando el Senor Oficial comi-

cionado se suspendiera el curso de esta estimacion y continuarla manana quatro ala hora senalada lo que firmo con el Albacea Interprete peritos y nosnotros los referidos testigos de que damos fe.

TRUELLO. JOSEPH MARSHALL.
WM. BAKER. PEDRO GILKES.
DOM. SAUSA. ANODOMONS de OCA.
RAFAEL SAEZ.

255

Suma y para ala bta . . . . . 2823.
Suma de la bta . . . . . 2823.

En la predicha habitacion sin embargo de ser Domingo y en vista de hallarse en la habitacion para proceder con la mayor brevedad a fin de imperjudicar a los interesados en esta testamento dispuso el Sr. Juez comicionado se continuase hoy dia quatro de los corrientes la diligencia de estimacion y enterados los peritos, Albacea y herederos por medio del Interprete, se continuo en la forma siguiente.

Primerante se dio pricipio a la entrega de lo donado a su hijo Benjamin las que no hayapor conveniente dho pan canmico nada era necesaria su estimacion por cuya motera se procede se procede a verificar siendo lo siguiente,

Edmundo, Negro, ...	1	"
Su mujer Judige	1	"
Su hija Lucinda	1	"
El Negro Levy	1	"
Su mujer Fanny	1	"
Sus dos hijos Beny, ...	1	"
Suma y para el frente		2823
Suma de lad	2823.	
Mario	1	
y dos mas que no le fueron entreg por hallarse ausente en la habitacion nombradas Rose y Brenbreco. . . .	2	"
Total donados	2,	

Los que fueron entregados en esta acto por disposicion de dho Sr. Juez al citado Benjamin por haber hecho presente a dho Senor tener la edad competente ser casado y tener hijos y que nesecitaba sus esclavos pa la subsistencia de ellos en cuya consequencia se le hiciese entrega de ellos lo que verificado se dio por satisfecho a su voluntad previo lo se les hizo a los esclavos ya citados y por no saber firmar esta entrega lo hizo el Senor

comicionado, Interprete Albaceay nosotros los testigos de de asistencia de que damos fe.

TREULLO. RAFAEL SAEZ.
DOM. SAUSA. JOSEPH MARSHALL.
PEDRO GILKES.

2823

Suma de la vuelta 2823

256 Consecutivamente en el dia quatro ya expresado, se continuo a la estimacion de los esclavos donados al hijo del difunto nombrado Henry mediante a que este se halla ausente y en su con sequencia se procedio por los peritos a su estimacion y fue verificada en la forma siguiente

Primeramente el negro Dick de edad de treinte cinco anos en dos cientos pesos 200,
Item, Lucia negra de treinte y cinco anos en ciento ochenta pesos 180
Item, La Negra de Peguy de diez anos en doiento cinquenta pesos 150
Item, La Negra pasencia de seis anos de edad en cien pesos 100
Item, La Negrita Pegey de cinco anos de edad en setenta pesos 70
Item, Otro Nombrado Juan de quatro anos de edad en sesenta pesos 60
Item, otro nombrado Pete y Elsey los

Suma y para el frente .. .. 3583 "
Suma de frente 2583

Los que fue donacion que hiso el difunto antes de morir al citado Henry. y no se pudo verificar su estimacion ni saber su edad por hallarse en la Nacion de Indios nombrada Corvitos por lo que despues el Sor. Juez comicionado se entregaran al Albacea baxo de su citada responsabilidad hasta el regreso del heredero y habiendoseles hecho entender por medio del Interprete quien era su legitimo dueno se cunpar mosas y al Albacea que quedaba encargado de ellos se dio por entregado a su voluntad y lo firmo con dho Sr. Interprete peritos y nosotros los testigos de asistencia de que damos fe.

TRUELLO. JOSEPH MARSHALL.
WM. BAKER. PEDRO GILKES.
DOM. SAUSA, ANA. MON- de OCA.
RAFAEL SAEZ.

Suma y para ala blta 3583
Suma dela bt. 3583

Inmediatamente hizo dho Senor qe comparesiesen los esclavos donados segun testamto a David hijo del referido difunto y se dio principio a la estimacion a la estimacion de los diez esclavos siguientes.

257 Primeramente se estimo la Negra Monty de quarebta y cinco anos de edad en doscientos pesos 200
Item, Susana de doce anos en doscientos pesos 200
Item, el Negrito Muigo de diez anos en ciento cinquenta pesos 150
Item, Felinino Negrito de ocho anos en noventa pesos 90
Item, Negrito de seis anos en ochenta pesos 80
Item, Jeny Negrita de quatro meses en treinte pesos 30
Item, Pedro Negro de quarenta y cinco anos bruto en ciento cinquenta ps. 150
Item, Ledy de treinte y cinco anos idem bosal en dos cientos pesos 200

Suma y para al frente 4683
Suma del frente 4683
Item, Elisa Mestiza e hijo defecho de veinte y un anos la madre en trescientos pesos 300
Item, Barbara de diez anos de edad en en ciento cinquenta pesos 155
Item, Nancy Negra, ... 1

Y concluida esta estimacion en atencion a que el heredero a quien pertenecian los esclavos que anteceden se halla ausente habiendosees hecho conocer a estos quien era su dueno se les hizo entrega y puestos a disposicion del Albacea el que de dho modo y por medio del Interprete quedaron a su cargo y responsabilidad y para qe todo conste lo firmo dho Senor Juez albacea Interprete Peritos y nosotros los testigos de asistencia que damos fe.

TRUELLO. JOSEPH MARSHALL.
WM. BAKER. PEDRO GILKES.
DOM. SOUSA. ANST, MOND de OCA.
RAFAEL SAEZ.

Suma de la vielta 5138

Y siendo pasado de las doce y media dispuso el referido Senor suspender este acto pa continuarlo a los tres de easts

tarde y pa qe asi conste se lo firmo dho Senor Juez, Albacea, Peritos, Interprete, y Nosotror los testigos de asistencia de qe damos fe.

TRUELLO. JOSEPH MARSHALL.
WM. BAKER. PEDRO GILKES.
DOM. SOUSA. ANST, MOND de OCA.
RAFAEL SAEZ.

Suma dela vuelta 5138

258 En el citado dia quatro de los corrientes siendo la hora senalada y unidos Albacea, Peritos y Interprete en la casa Mortoria se continuo la estimacion de los esclavos que esgun clausula de testamento peretenecen al hijo del difunto llamado Thomas y dieron principio los perotes en la forma siguiente

Primeramente el Negro grande Georg de treinta y cinco anos de edad en doscientos y cinco pesos 255
Item su mujer Juana de treinta anos en doscientos cinquenta 250
Item, Siguel de cinco anos en setenta y cinoco pesos.. 75
Item, Rebeca Negrita de dos anos en cincuenta pesos.. 50
Item, Alae de veinte y cinco anos en doscientos cinquenta pesos 250
Item, Felip Negrito de nueve anos en ciento cinquenta pesos 150
Item, Lisey Negrito de quince anos en doscientos cinquenta pesos 250
Item, Precillo de ocho anos en dos cientos pesos 200

Y no hallandose como esta diho presente el heredero se les entero por el Interprete quien era su legitimo dueno y al Albacea de que debia a

6618

Suma y para la vuelta 6618

Suma de la vuelta

su cargo y responsabilidad interim se presentaba el citado Thomas y para qe conste y que sedir por entregado lo firmo con dho Sor. Interprete, Peritos y nosotros los referidos testigos que damos fe.

TRUELLO. JOSEPH MARSHALL.
WM. BAKER. PEDRO GILKES.
DOM. SOUSA. ANS MONT de OCA.

Consecutramente se procedio por los Peritos aRaaaestaecion

de los esclavos del heredero hijo del difunto nombrado Mateo que le pertenecen segun clausula del testamento:

Primeramente se estimo el Negro Thomas de quarenta y cinco anos de edad en doscientos pesos 200
Item, lo negro Judy de quarenta y tres anos en ciento cinqt pesos 150
259 Item, el Negro Sanson de caforce anos, en dosciento cinqt 250
Item, Ana Negrita de doce anos en doscientos pesos.. 200
Item, Otro nombrado Mela de diez anos en ciento ochenta pesos 180
Item, Otra nombrada Anita de doce anos en doscientos pesos 200
Item, Muniol
Item, Naney.

En cuyo caso hallandose ausente el heredero Mateo como asi mismo toner en su poder los dos ultimos esclavos Muniol q dispuso dho Senor que por medio del Interprete se les hiciese saber a los esclavos anteriores quien era su legitimo dueno y al Albacea que

Suma y para ala bta 7798

Suma pasada del abta 7798

queden a su cargo y responsabilidad hasta la llegada de su legitimo dueno y para que asi conste mando dho Senor sepuciere pa diligencia que la firmo con el Albacea, Interprete, Peritos y nosotros los testigos de asistencia que damos fe.

TRUELLO. JOSEPH MARSHALL.
WM. BAKER. PEDRO GILKES.
DOM. SOUSA. ANAN. MON de OCA.
RAFAEL SAEZ.

Inmediatamente a que los demas esclavos comtan del comtan del testamento legados a su hijo Guillermo y al Albacea D, Jose Marshall les han sido entregados mediatamente hallarse presentes y ser de la edad competentes segun las leyes l previenen mando

Suma y para al frente 7798
Suma del frente 7798

dicho Senor y sin embargo de que se les hizo hacer entrega de ellos se pueres en sus nombres a continuacion pa que por

tarde y pa qe asi conste se lo firmo dho Senor Juez, Albacea, Peritos, Interprete, y Nosotror los testigos de asistencia de qe damos fe.

TRUELLO. JOSEPH MARSHALL.
WM. BAKER. PEDRO GILKES.
DOM. SOUSA. ANST, MOND de OCA.
RAFAEL SAEZ.

Suma dela vuelta 5138

258 En el citado dia quatro de los corrientes siendo la hora senalada y unidos Albacea, Peritos y Interprete en la casa Mortoria se continuo la estimacion de los esclavos que esgun clausula de testamento peretenecen al hijo del difunto llamado Thomas y dieron principio los perotes en la forma siguiente

Primeramente el Negro grande Georg de treinta y cinco anos de edad en doscientos y cinco pesos . . . 255
Item su mujer Juana de treinta anos en doscientos cinquenta 250
Item, Siguel de cinco anos en setenta y cinoco pesos. . 75
Item, Rebeca Negrita de dos anos en cincuenta pesos. . 50
Item, Alae de veinte y cinco anos en doscientos cinquenta pesos 250
Item, Felip Negrito de nueve anos en ciento cinquenta pesos 150
Item, Lisey Negrito de quince anos en doscientos cinquenta pesos 250
Item, Precillo de ocho anos en dos cientos pesos . . . 200

Y no hallandose como esta diho presente el heredero se les entero por el Interprete quien era su legitimo dueno y al Albacea de que debia a

6618

Suma y para la vuelta 6618

Suma de la vuelta

su cargo y responsabilidad interim se presentaba el citado Thomas y para qe conste y que sedir por entregado lo firmo con dho Sor. Interprete, Peritos y nosotros los referidos testigos que damos fe.

TRUELLO. JOSEPH MARSHALL.
WM. BAKER. PEDRO GILKES.
DOM. SOUSA. ANS MONT de OCA.

Consecutramente se procedio por los Peritos aRaaaestaecion

de los esclavos del heredero hijo del difunto nombrado Mateo que le pertenecen segun clausula del testamento:

Primeramente se estimo el Negro Thomas de quarenta y cinco anos de edad en doscientos pesos 200
Item, lo negro Judy de quarenta y tres anos en ciento cinqt pesos 150
259 Item, el Negro Sanson de caforce anos, en dosciento cinqt 250
Item, Ana Negrita de doce anos en doscientos pesos.. 200
Item, Otro nombrado Mela de diez anos en ciento ochenta pesos 180
Item, Otra nombrada Anita de doce anos en doscientos pesos 200
Item, Muniol
Item, Naney.

En cuyo caso hallandose ausente el heredero Mateo como asi mismo to ıer en su poder los dos ultimos esclavos Muniol q dispuso dho Senor que por medio del Interprete se les hiciese saber a los esclavos anteriores quien era su legitimo dueno y al Albacea que

Suma y para ala bta 7798

Suma pasada del abta 7798

queden a su cargo y responsabilidad hasta la llegada de su legitimo dueno y para que asi conste mando dho Senor sepuciere pa diligencia que la firmo con el Albacea, Interprete, Peritos y nosotros los testigos de asistencia que damos fe.

TRUELLO. JOSEPH MARSHALL.
WM. BAKER. PEDRO GILKES.
DOM. SOUSA. ANAN. MON de OCA.
RAFAEL SAEZ.

Inmediatamente a que los demas esclavos comtan del comtan del testamento legados a su hijo Guillermo y al Albacea D, Jose Marshall les han sido entregados mediatamente hallarse presentes y ser de la edad competentes segun las leyes l previenen mando

Suma y para al frente 7798
Suma del frente 7798

dicho Senor y sin embargo de que se les hizo hacer entrega de ellos se pueres en sus nombres a continuacion pa que por

medio del Interprete se les hiciese reconocer a quien le pertenecian y son como sigue A su hijo Guillermo,

Primeramente, el negro nombrado Carlos el grande .. 1
Item, Solly Negra, ... 1
Item, Nily Negra, ... 1

Total 4

260 Item, al Albacea y heredero D. Jose Marshall los siguientes

Primeramente, Max Negro 1
Item, Regre, mulato 1
Item, Flora, Negro, ... 1
Item, Miguel Negro 1

Total 4

cuyos esclavos se hicieron comparecer y apresencia de los dos vecinos D. Thomas

Suma y para ala bta 7798
Suma dela buelta 7798

Miler y D. Jose Hardndqe que presendiaron toda la estimacion y diligencia que se practicaron que por orden de dho Senor Juez fueron embarcados pa la mayor satisfaccion e integridad con que se ha procedido en estas cretas y que en ningun tiempo no pueda haber ninguna desconfianza en los mones se les entrega e hizo reconociesen por sus legitimos duenos al citado Guillermo y D. Jose Marshall, y habiendo dicho el Interprete que desde luego tanto los duenos como los esclavos se hallaran conforme y entregado a su voluntad dispuso se pusiese por diligencia pa qe en todo timpo conste que firmo con el Albacea, Interprete no haciendolo el heredero Guillermo por haber dicho no saber de que nostros los testigos de asistencia damos fe.

Suma total 7798

TRUELLO. JOSEPH MARSHALL.
DOM. SOUSA. PEDRO GILKES.
RAFAEL SAEZ.

I en vista de que por los Inventarios no consta haber otra cosa que poder estimar y segunrlo que expreso el Albacea no tener en su memoria ni reconocer en la actualidad atros efectos portenecientes al difunto se concluyo esta diligencia que firmo

dho Senor Albacea Interprete y nosotros los testigos de asistencia qe damos fe.

TREULLO. PEDRO GILKES.
DOM. SOUSA. JOSEPH MARSHALL.
RAFAEL SAEZ.

En la Plaza de Panzacola a siete de Diciembre de mil ochocientos catorce el Sor. D. Treullo, Sectgo. del Recto, Infantn de la Luisiana Juez comicionado por el Sr. Comandante de esta Prov. pa la deligencia de esta estimacion de los efectos
261 edificfosto y esclavos qe dixo a su fallecimiento el habitante D. Thomas Marshall estando concluida toda su comicion y habiendo llegado a esta Plaza como a las diez de la manana de este dia paso acompanado de nosotros a la casa de Gobierno e hizo exibicion a su Senoria de todo lo obrado en la citada habitacion compuesta de catorce foxas utiles sin cubierta mediante a que deber agregacio a los principales diligencias y pa que todo conste lo firmo con nosotros de que damos fe.

TRUILLO. RAFAEL SAEZ.
DOM. SOUSA.

En vista de las diligencias que ha practicado el Subteniente del Reginiento de la Luisiana D. Jose rcullo por enfermedad del que estaba nombrado, D. Martin de Madrid en su consequencia se aprueba la estimacion hecha qe. los peritos que han nombrado las partes entrega y dunos que ha practicado cuanto ha lugar por derecho y en su virtud agregase estas diligencias ultimas a las principales para que obren los fines que en su oportunidad sea necesario si el Albacea pidiese testimonio desele integro para los fines que pueda convenilrle pogando su pinto derecho haciendoselo saber al precitado Albacea Dn. Jose Marshall formalice la fianza legar de su persona y bienes pa responder a los herederos menores y ausentes de dho difunto interim verifique su entrega a estos en cuyo momento que lo exocute se levantara dicha fianza. Ta sesen los costos ultimamente consodor desde L 18 hasta los 33 inclusive.

DOM. SAUSA. GONZALES.
RAFAEL SAEZ.

En el mismo dia nosotros los testigos de asistencia enteramos de la providencia que antecede por medio Interprete Albacea D. Jose Marshall y de quedar enterado damos fe.

PEDRO GILKES.
RAFAEL SAEZ.

Tosacion de costos causados en esta diligencia a desda foxas 18 ante estos ultimos segun lo mandado y con arreglo al re Aransel.

Al Senor Gobernador por dos firmas enteras un peso.....	
Al Senor Juez comicionado Subte. U. Jose Treullo por su honorario en el campo en quatro enclusive la ida y buelta	44
Al Interprete Dn. Pedro Gillkeuq por igual rason	42,4
Alos dos peritos estimadores por igual razon y por la misma diligencia que han practicado	60
262 Al testigos de asistencia igual razondamos ocupacion y escrito	755
Al Sgto de custodia Jose Guerra	4
A los quatro grand por lo mismo como senunos en toda la comicion	16
Suma y para la bta	243,1

Sincemente de parte lexitima a cuya firma obligarme obligado tiene su persona y bienes dando poder alos finticias de S. M. pa que asu cumpte- sele apreme sobre que renuncio los leyes, derechos y privilegios de su favor con lo general en forma qe le prohibe en cuyo testimonio asi lo dixo otorgo i firmo siendo testig instrumentales D. Migl Betanenont, D. Juan Solr y D, Anastacio Montes de Oca. y de asis tencia por falta de escrivano Domingo Laura y Rafael Saez que conmigo subscriben.

PEDRO GILKES JOSEPH MARSHALL

Ante M—

MATEO GONZ— MARIQUE

DOU. SAUSA. RAFAEL SANZ.

En la de Panzasola a veintedos de Enero de mil ocho cientos diezyseis yo Jose de Sota, Coron- del Reginto infanta de la Habana y Gobernador politico y Militar.... de esta provincia digo que se me ha dado hoy parte haber fallecido D. Jose Marshall la noche antecedente a fin de que el Albacea nombrado D. Juan Tunerarity pueda queseden con arreglo a sus ultimas disposiciones y que conste su fallecimiento pasen los testigos de asistencia al reconocimiento del cadaver que pondran por diligencia que le const como asi mismo de enterar a los Albacea su fallecimiento (iempre que asi sea) poniendose a continuacion testimonio testig- del citado testamto y evacuada toda pasese ala consulta del Senor Auditor de grra para que dich la providencia que correspomda y mediante no haber escribano publico nombro para testigos de asistencia alos que juramentados en

debeda forma actuan conmigo, nombrados Domingo Laura y Jose Cevallos que aceptaron este cargo y firmaron de que certifico.

SOTA. JOSE CEVALLOS.

DOM. SAUSA.

Inmediatamente nosotros los testigos de asistencia en complimento al Auto que antocede pasamos ala casa del vecino de esta Plaza Romere Castillo en donde fuimos informados habia fallecido el citado D. Jose Marshall y habiendolo encon-
263 trado dela sala tendido en sima de una mesa cubierto con una sabana blanca y a fin de serciorarnos si esra el mismo Marshall levantamos la sabana por parte dela cabaze y reconecimos en su rostro sor dicho cadaver el del precitado Marshall y que el parecer se hallaba difunto y para que todo conste en obediencia alo mandado lo ponemos por diliga de que damos fe.

DOM. SAUSA. JOSE CEVALLOS.

Consecutivamente lo hicimos saber a D. Juan Tunerarity, el que nos e xpreso estaba lya informado de su fallecimiento por el mismo amo de la casa Ramon Castillo y pa que todo conste lo ponemos por diligencia de que damos fe.

DOMGO. SAUSA. JOSE CEVALLOS.

Nonto- De Interprete.

Enla Plaza de Panzacola a diez y seis de Enero de mil ocho cientos diezy seis yo D. Jose Desoto Coronel del Regimiento de Infanteria de la Habana Gobernador politico y militar de esta provincia digo que el vecino de esta Plaza D. Jose Marshall ha solicitado por medio del Sr. Cura de esta Parroquia DN. Santiago lealmon queria hacer su testamento y mediante a que dicho Marshall no posee el idioma Castellano siendo necessario nombrarse Interprete para que exprese en nuesrtro idioma lo que dixese en la suya Dn. Jose Marshall, no hallandose en esta Plaza el propietario Dn. Pedro de Alba nombro para lo exersa en su lugar las funciones de este a Dn. Pedro Guilkes por ser hombre de toda satisfaccion y entender ambos idiomas quien enterado de este nombramiento dixo que lo aceptaba juro de fidelidad y firma con migo y testigos de asistencia de que damos fe.—Pedro Guilker, Jose de Desoto Domg. Sousa.—Jose Cevallos.

Testant.

En el nombre di dios todo poderoso amen. Sepan quanto esta cortov- de testamento ultima y postrimera voluntad como

yo Jose Marshall hijo lexitmo de D. Mateo Marshall y de Da. Marta Mothers natural de Irlanda y yo de esta Parroquia como hallandome enfermo en cama, de lo que S. M. se ha servido darme pero en mi entero juicio y cabal memoria temiendo a la muerte que es natiral a toda persona sierto y seguro de que ha de llegar la mia, y su incierta hora y croyendo actualmente en el alto y soberano misterio de la Santisima Trinidad Padre, Hijo Y Espiritu Santo tres personas distintas y un soloDios verdadero y en todo lo domas que creo y confieso nuestra Santa Madre Iglecia C. A. R. 66sin embargo presorteriona y
264 que ala presente es mi animo el vivir o morir en lo catolico quiero hacer mi testamento Y para su mayor validicion y firmeza nombro por mi abogada ala Soberana Reina de los Angeles Maria y senora nuestra para que interceda con su piadosisimo hijo el perdon de mis culpas y pecados baxo cuya soberana inoccacion lo verifico en la forma siguiente.

Primeramente.

el

Encomiendo mi alma mismo Dios que la crio y redimio con valor de sup reciosisima sangre pasion y muerte el Cuerpo mando ala tierra de que fue formado y os mi voluntad que si llegaso a fallecor en esta Plaza, se me sepulto en el Campo Santo de los Catolicos por ser asi mi ultima voluntad.

2do Item, declaro ser soltero y no tener herederos forzosos por haber fallecido mis padres.

3° Item, os mi voluntad se me digan las tres misas dol Alma por el descanso de la mia y se den de limosna por mi a vez, dos pesos que mis Albacea lo separaran de mis bienes y quieresc misas en su pagos del as benditas animas del purgatorio para que conste.

4° Item, dejo a disposicion de mis Albacea para que dispongan los funerales de mi entierro con la decencia devida pa que conste.

5° Item, declaro por mis bienes tres habitaciones la una situada enfrente del rio Escambia lindando por un lado con la de D. Tomas Nicks y por el otro con D. Pedro Fulibert: otra en la posa nombrada del Indio y la otra que he comprado a Manuel Domingues en el Boyer,.... .... del Gobernador de la que no me ha entregado el titulo de propiedad .... go se he satisfocho hasta esta fecha cantid dalguna. Item mas, nueve esclavos de ambos sexosonmbrados Lora con dos hijos Honah y ana Cecita con dos Idem Luida y Ana Flora, Juana, y un leoran nombrado Miguel: tres Caballos de carro, un vale importado diez bacas y orias que su primo Jose Marshall deve

entregada en su habitacion en la primavera del corriente ano dos Hornos de Alquitran en las inmediaciones de dicho Bayu del Gobernadan: y como ciento y cinquenta Barriles de Alquitran mas de nueve que so hayan en las dichas inmediaciones del citado Bayu mas ciento ochenta barriles de idem que embargo por mi cuenta y riesgo en la Goleta de D. Juan Farbes y compania con destino ala Habana LLamado la Diono: Item cinquenta mas barriles poco mas o menos bacios para dicho efecto
doscientos setenta y dos Barriles de Alquitran llenos en
265 Compania del nombra de Lucos debiendo pagar este la
mitad de los gastos que costaron los casos y demas gastos de carruages y viveres que yo yo he iprido un fagua de herrero completo como doscientos pesos devalor en erramienta de carpinteria y labranza en poder de Jorge Castigins habitante del Rio Alabama.

id |, T. N. recibo contro Tio furtus Porvel de la cantidad de sesente y siete o setento y seis pesos cuyo recibo se oncontrara entre mis papeles que existen en caso de Erlios soid otro recibo contra la subsecion del difunto D. Antonio Montero de la suma de sesenta y un pesos que tengo en mi poder otro recibo que se halla en manos de mi Abogado Samuel Acre en la Mobila contra Gillermo Polard de la suma de doscientos pesos: Otro contra fosios Felaar de Mil quatrocientos ye pico de pesos como constra del recibo que sehallia en poder del expresado Said sin que me acurdo por lo presente me son debida otra cosa y en caso de sor me y se encontraso algun otro recibo o documento entre mis papoles vendores algunas otros personasquienes seancamados por mis Albacea a quienes encargo procuren recojer tres osclavos de mi pertenencia nombrados Calup, Felix, Y Nily que se hallan fugitivos todo lo que asi declaro para que conste.

6° Item, Declaro dober a Ramon Castillode esta vecinded una cantidad de pesos que me ha subministrado en plata y varios objetoc como asi misomo de mi orden a mis dos primos y hobr ros como alos carpinterosy tanderos. cuya cantidad ascinde segun su cuenta a la sima de Mil quatrocientos setneta y quatro pesos un real devenido dicho Ramon formar cuenta separada de la que cada uno haya tomado rebakando tomando rebajando de mi parte la suma de ciento vointe pesos, importe de tres mil pios de madera que le he entregado todo lo que declaro pa qe conste.

7° Item, declaro deber igualmente a Dn. Franco. Bonals, ciento diez y nueve pesos y adomas treinta berriles de Maiz en espiga y dos otros barriles de Arroz pa qe conste.

8° Item, a D. Juan Forreils y Compania, debo una cantidad de pesos cuya suma ignoro lo que constara por sus libros de casa pa que conste.

9° Item Asi mismo declaro deber a Santiago Landman la hechura de mil seiscientos barriles a razon de dos reales cada uno de lo que debe rebajarse lo que he tomado en casa de Ramon Castillo por un quarto como asi mismo en case de de DN. Juan Inunerarity y en la de Dn. Juan Banols, y de lo que conste por los asuntes de mis libros pa qe conste.

10°. Item, declaro deber al Negro Libis nombrado Neli una corta contidad de la cual tiena noticia Santiago Land-
266 mand de la que tengo pagado quarenta y siete pesso a curenta: A orto de ingual clase llamado Nede la suma de diez pesos a Guillermo Lonnogan veinte y un pesos y un real a Dn. Fernando Moreno cinco pesos pa qe conste.

11°. Item, que la habitacio que compramos por mitad con Elias Liod segun escritura en este Oficio le he satisfecho la suma de diento veinte y cinco pesos restandole solo a deber viente y cinco que con orta cantidad que me esta debiendo dicho Loid considera hace la summade nustras cuentas poco mas o menos por igual pa qe conste.

13°. Item, mas me es deudor Santiago Tholl de la suma de treinte pesos pa qe conste.

12°. Item, declaro serme debidos por DN. Tomas Riobo la suma de veinte y cinco poses que preste pa qe conste.

14°. Item, declaro que he entregado y dado cuenta a los menores del difunmi tio Dn. Tomas Marshall, Jose, Molly Santiago los que les pertenecio de la subseccion de dicho difunto de los que no he delos que no he exigido recibo por ser Indos Mestizos que acostumbran o formelisan este requisito pa qe conste.

15°. Item, declaro que todo lo que pertenece a los otros quarto coherederos de dicho difunto que se continuan como son los esclavos que les correspondieron los tengo en mi poder a excepcion de cinco que robo el Americano Thomas Thollmes que por lo que corresponde en dinero lo he gastado en manutencion de dichos menores y de sus dichos esclavos quienes no le han dado ningin producto a causo de la guerra de los Indios y en el estrabio que tubo para pasar al questa de tense para asegurar pa qe conste.

16°. Item, nombro e instituyo a mi hermana enferma Juana Marshall heredera de la mitad de mis bienes despues de satisfechas mis deudas gastos de entierro y demas que se ocasionaren y la otra mitad repartida entre mis medios hermanos nombrados Guillermo Littie y Ana Tuet para que lo gozen y disfruten con la voluntad de Dios por asi la mia y para que lo referido tenga su debido y puntual cumplimento nombro por mi Albacea testamentaro y tenedores de bienes en primer lugar a Dn. Juan Inunerzarity vecino y del comercio de esta Plaza y en

segundo, a Dn. Castillo Custian Lungurgh a quienes suplico procedan a los inventarios y demas diligencias que sean conducundes su intervencion de justicia prorrogandole el Ano yo o mos si fuere y nesesario y reboco y anulo y doy por voto y de ningun valor y efecto cualesquier orto testamento cadecido que antes de este haya hecho de escrito o de palabra, pues solo quiero balga esto que a la presente otorgo en la via y forma que mas haya lugar en dro en cuyo testimonio el presente en
267 Panzacola a diez y siete de Enero de Milocho cientos diez y seis—be el expresado Gobernador certifico conozco el otorgante que asi le dixo otorgo i firmo como asi mismo de que al parecer se halla en su entero juicio y cebal memoria siendo testigos presentes tuve Snores Dn. Juan Saez y de asistencia por falta de escribano Domingo Sausa y Jose Cevallos que conmigo subscriben—Joseph Marshall—Pedro Gilkes—Juan Suares, Juan Saez, Ramon, Santiago Ante, my Jose de Soto Domingo Sausa—Jose Cevallos.—

Es conforme a su orgl que queda el quederus de testimento que existe en el oficio publico y en virtud de lo mandado ponemos la pre sente en Panzacola a veinte i tres de Enero de Mil ochocientos diez y seis—Entre renglones,—a Gullermo Longan veinte y un pesos vale—

DOMINGO SAUSA, JOSE CEVALLOS.

Panzacola y En, 25 de 1816.

Visto se declara legitimo el testamento otorgado pr D. Tom—Marshall en diezy seis del corriente y respecto a que en la clausula decimo sexta ordena que sus inventarios y demas diligencias se hagan sin intervencion de justicia entrequere este expediente al Albacea nombrado Dn. Juan Inunerarity pa que de acuerdo de los herederos y del curador de los quatro menores que cita—testados en la clausula decimaquinta a quienes se les hara saber pa el efecto proceda a la a la faccion de inventarios y tosacion de los bienes dentro toscinto dias presentado los al Tribunal con la relacion jurada de ganas y de cretos devisiria pa su debida probacio y decretos de segiridad de los quatro de los menores de que estaba hecho cargo el difunto tres anos veintey cuatro rre que Carlos costos satisfara el Albacia cmo tenedor d bienes.

HERNANDEZ, SOTO,
DOMINGO SAUSA, JOSE CEVALLOS.

En el mismo dia pasamos a la casa de Dn. Juan Inunerarity Albacea testamentario del difunto Dn. Jose Marshall y le enteramos del auto que precede de que damos fe.

SAUR, CEAVALLOS.

En el citado dia solicitamos de algunos delos conocidos del mencionado difunto que se hayan en esta Plaza si sabian el paradero de su hermana y de sus dos medios hermanos herederos del consabido difunto y ninguno de ellos ha podido dar razon del parajo donde existen y si dde que no se hallan en esta Plaza y pa qe todo conste lo ponemos pa diligencia de que damos fe.

DOMINGO SAUSA, JOSE CEVALLOS.

268	Tosacion de costos cumados en estas diligencias segun se previene y con arreglo al arancel.... .....R1,	R1,
	Al Sor Gobernador pr Suauto Y una media firma diez reales....	10 "
	Al Balelor Auditor por su asesoria....	24 "
	A los testigos de asistancia para el testimonio de diligenoias en decreto un Notfs papel y escrito y auto	48 "
	Al toxador por esta ocupacion..	5 "
		87 "

Panza. 2, de Eno. de 1816. Simpl.

DOMINGO SAUSA.

Inventario de los efectos existentes en la habitacion del difunto Dn. Jose Marshall practicado por nosotros Christian Limbough su Albacea testamentario Mateo Hanna comicionado por Dn. Juan Innurarity que tambien es Albacea en persona de Dn. Thomas Millar y Jaime Lannan unos testigos y de Bufamin Marshall y sus heremanos como interesedos en dicha testamentaria a saber—

En el Almacen de Maloja O Paja de Maiz.

Un candado mediano.
Tres arados sin rupas.
Un arado de repa o pala.
Una firrase.
Una cuna de bierro.
Una cuna de dos manos.
Como diez quintales de malexa.

En el Almacen de Maiz.

Tres Brierros para arados.
Ocho asadas usadas.

Quatro Nores.
Dos Curbrillos de arados.
Dos gambios de tirantes pa caballos.
Una marca de bierro pa ganado.
Un bierro pa arado.
Una Hasha de esquadras.
Una Lima de Fravez.

En la Fragua.

Un Ayonque.
Un Fuelle.
269 Un Mayo.
Un Martillo.
Un Toxmillo de herrero.
Dos Tenazas.
Una libre de Acero.
Un candado.
Una Lima.
Un Exe de Carro.

En la Casa de Morada.

Cinco Sillas.
Un Sombrero.
Un par de Navajas.
Un Baul que contiene los Libros sigts en Ings.
Un Biaje en Buque.
Diccionaro de Bacley.
Gramatica de Murray.
Vida de Plutarco.
Ley de evidencia.
Un manual de la Inbentud.

En la Casa de la Hasitacion del Bayu del. Cobor—de la Mulata.

Unchaleco usado.
Xn corte de chaleco.
Un libro vies de cuentas.
Dos Pomitos.
Un libro en ingles Luta de Murray.
Dos cardos para Algodon.
Siete cuchillos y dos Tenedores.
Una cuchara.
Un Cepillo pa limpiar Zapatos.
Media botella de Aceite de Oliva.
Once Barriles de Maix en espiga.
Un Barril y un quarto de Arroz.

Quatro Barriles de Alquitran.
Dos asadas.
Quatro montones de Patatas en todo como treinta Barriles.
Dos Mulas pertenecientes a la suseccion.
Una Yegua Difunto.
Un Chincharo chico podrido.
Un bote viejo.

270 *Esclavos del Difunto Jose Marshall.*

Mignit de diez y ocho anos de eded.
Flora de treinta y cinco anos Idem.
Juana de veinto ocho anos Idem.

Idem del Menoc Benjamin Marshall.

Livy de treinta anos.
Su mujer Francisco de veinte y cinco anos y una nina do dos anos.
Edmundo do troints anos.
Judice su mujer de troina Id.
Sunuda su hija de dos anos.
Exequiel su hijo do siete anos.
Maria o Peguy de tres anos.
Jeny de dos anos.
Cloce de treinta y cinco o treinta anos.
Folipo su hijo de siete anos.
Elisa de veinte y un anos.

Idem del Menor Henrique Marshall.

Dick de quarente anos.
Lucia su mujer do treinte anos.
Peguin su hijo de dose anos.
Pesiencia Idem do ocho anos.
Poxi hijo de oinco anos.
Juan de quatro anos.

Idem del Menor Mateo Marshall.

Thomas de quarenta y seis anos.
Judi su mujor de quarenta Id.

Ana su hija du quince anos.
Sanson de diezy siete anos.
Nabaniel de doce anos.

Idem del Menor David Marshall.

Pedro de quarente anos.
Minde su mujer de treinta y cinco anos.
Susana su hija de catorce anos.
Felix se hijo de siete anos.
271 Lidy mujer de treinta anos.
Juan su hijo de doce anos.

Seis Iden que Declara en su Testamento el Difunto Jose Marshall Pertenecerle a Saber.

Sara mulata como de veinte y cinco anos.
Ana su hija de quatro anos.
Nany Id de quince pesos.
Cecilia de veinte y ocho anos.
Linder su hija de quatro anos.
Nany idem de doce anos.

Cinco Idem que se Llevo el Americano Thomas Hollmes Segun Consta del Testamento Cuyos Nombres no se nos han Esplicado.

Papeles.

Siete documentos de D. Thomas Marshall en idoma Ingles numerados del 1 al 7, en que consta lo quo dexo a sus menores hijos.

Tres recibos de costos pagados por el difunto Jose Marshall a los testigos de asistencia importantos cuatrocientos quarenta pesos.

Otro recibe de D. Angel de Orta por el que consta le pago el difunto doscinetos setenta y cinco pesos por la cura que hizo a su tio D. Thomas.

Otra de Dn. Fernando Moreno que pago con igual motivo.

Una obligacion en idoma ingles a favor del difunto Jose Marshall en que que ortro de su mismo nombre y apellido se obligo a entregarle algunas reses en su habitacion.

Una cuenta en el mismo idioma de perdidas en la Nacion Creek, importando dos mil setecientos trointa pesos fixmada de Will McCandle.

Dos obligacuiones del nombrado Josiah Taylor la una de mil y un pesos con un doce de haber reisbado setecientos os y la otra de mil trecientos pesos sin endoce alguno.

Un Ligappiqueno que comprendo varias ventas privadas todas en idioma ingles.

I no habiendo otros efecta muebles, esclavos ni papeles que

los que se hen comprendido en este inventario se da por concluido y la fixmamos el Albacea i representante de Dn. Juan Innerarity con los dos testigos que la produmaron no habiendolo hecho el mestizo Benjamin Marshall ni sus hermanos por no saber escribir. En la habitacion del difunto distante
272 como cinco leguas de la Plaza de Panzacola a cinco de Febrero de mil ochocientos diez y seis. entre renglones dice y-vo.

CHRISTIAN LINBAUGH, MATHEW HANNA,
THOMAS MILLER. JAMES LENMAN.

En diez i ocho de Febrero de mil ocho cientos diez y seiz nosotros Dn. Juan Innerarity y Dn. Christian Limbaugh, Albaceas testamentarios del difunto Dn. Jose Marshall habiendonos reunido en su habitacion como a cinco leguas de distancia de la Plaza de Panzacola cerca del Bayu del Gobernador o de la Mulata a efecto de proceder a la estimacion de los bienos inventariados nombramos por estimadores a Dn. Millan de la Carrera y Dn. Jose Maria de la Panza quienes se prestaron de buena voluntad a acceptar dicho encargo y par testigos a los vecinos Tomas Miller y Guillermo Macfaron quienes tambien acceptaron y siguiendo el orden que se hizodel antiguo Abalus que se hizo por el Fallecimiento de Dn. Thomas Marshall Tio del difunto Dn. se dio principio en la forma que sigue.

Primeramente se estimo la casa antigua de la morada del difunto que se halla totalmte deteriorada caynedose en sesenta pesos.... .... 60. "
Asi mismo se estimaron tres almacenes y las cabanas de los Negros o esclavos todas en un estado de pudricion en cinquenta pesos.... .... 50. "
Todos los utiles y herramientas pertenecientes a la habitacion segun el inventario todo en un estado de abundono en treinta pesos.... .... 30. "
Dos asadas tod o viejo y muy usadas en cinco pesos.... 5. "
Cinco sillas viejas de mader la una de ellas rompida en cinco pesos..... .... 5. "
Algunos libros y ropa vieja segun orden del inventario en cinco pesos todo.... .... 5. "
Los utiles de la Fragua mui viejos y malos incluso el fuelle en quarenta pesos .... 40. "
Item, como diez quintales Maloza en Diez pesos..... 10. "
Doce barriles de Maiz en espiga en quince pesos..... 15. "
Un barril y quarto de Arroz en Ocho pesos.... ..... 8. "
Quatro montones en todo come venite barriles en veinte q cinco pesos.. .... 25. "

Ciento y veinte y seis barriles de Alquitran llevados a Panzacola durante su enformedad y sonlos mismos referidos en su testamentos como existentes en el Bayu de Mulata suponiendo veinte y cinco barriles

mas o menos abaluados con tando.... .... 253. "

273 los gastos de conduccion a Panzacola en seis reales y medio cada uno condicionado con mucho derrame por haberseles saltado los arcos y necesitarse de una grande composicion.... ..... 102.3

Cinquenta Barriles de Alquitran en casa de Ramon Castillo todos nesecita de composicion de Tonelero por causa del derramo considerable que experimentan en——.... .... 43.6

Ochocientos treinta barriles vacios abaluados en tres reales cada uno..... .... 312.

Dos Hornos de Alquitran no acabados en que se regulan quinientos barriles el uno quatro cinetos el otro estimados cada barril en dos y medio rs..... 281.2

Doscientos y treinte Barriles de Alquitran que e hallan en poder del nombrado Lucas reclamando este la mitad de su salario y todos los gastos hechos y abauna de los barriles decimos id—.... .... 236.2

1228.

Dos Mulas pertenecientes a la susecion abaluadas en cine pesos lasdos.... .... 100. "

Uno yegua perteneciente al mismo difunto en quarenta pesos.... .... 40. "

Un Boto drieso en Panzacola que se haya a pique por estar abierto y destrosado abaluado en veinte pesos 20. "

Un Cinchorro viejo podrido en quince pesos.... ..... 15. "

Un Fringuidad todo podrido un dos pesos..... ..... 2. "

Esclavos del Difunto Jose Marshall.

Miguel de diez y ocho anos abaluado en doscientos pesos 200. "

Flora de treinta y cinco anos en ciento ochenta pesos.. 180. "

Juana de viente y ocho anos en doscientos pesos..... 200. "

Idem del Menor Benjamin Marshall.

Lubi de treinta anos en doscientos cinquenta pesos.... 250. "

Su mujer Francisca de veinte y cinco anos enuna nina——

2235.5

de dos anos en doscientos pesos..... .... 200. "

Edmundo de teinta anos en doscientos pesos.... ..... 200. "

Judit su mujer de treina anos en ciento y ochenta pesos.... .... 180.
Una nina Lucinda de dos anos en cinquenta pesos 50.
Un nino de pecho de cinco meses llamado Edmundo en treinta.... .... 30.
——— 260. "
Bambri de veinte ano sen doscientos pesos..... .... 200. "

274 *Idem del Menor Thomas Marshall.*

Jorge de quarenta anos estimado en doscientos treinta pesos..... .... 230. "
Juana su mujer de veinticinco a trenita anos en doscientos pes.... .... 220.
Exequiel su hijo de siete anos chico i enfermizo en setenta y cinco pesos..... .... 75.
Maria o Pegun de tres anos no se estima por estar a la muerte Tuir nina de de dos meses en veinticinco pesos..... .... 23.
——— 320. "
3645. "

Cloce de treinta anos abaluada en doscientos veinte y cinco pesos.. .... 225.
Felipe su hijo desiete anos en cien pesos..... 100.
——— 325. "
Lissy hija de Big Billey de treinta anos en doscientos veinte cinco ps..... .... 225. "

Idem del Menor Henrique Marshall.

Dick de quarenta anos en doscientos pesos..... 200.
Lucia su mujer no se estima por estar espirando
Peguy su hija de doce anos en ciento cinquenta pesos..... .... 150.
Pasiencia de ocho en cien pesos..... .....
Posi de cinco a seis anos en setenta pesos..... 70.
Juan de quatro anos en sesenta pesos.... ..... 60.
——— 850. "

Idem del Menor Matco Marshall.

Thomas de quarenta y seis a quarenta y sieto anos estimad en doscientos pesos..... .... 200.
Su mujer Judi de quarenta y tres anos en ciento cinquenta..... .... 150.
350 4775.5

Sanson de diez sieto anos en doscientos veinte cinco pesos..... .... 225.
Ana De quince anos en doscientos pesos..... 200.
Milly Idem de trese en ciento ochenta anos..... 180.
Nathaniel de doce anos en ciento s tenta y cinco pesos.... .... 175.
——— 1130. "

275 *Idem del Menor Martin Marshall.*

Pedro de quarena y cinco anos buto en ciento cinquenta pesos.... .... 150.
Mindu su mujer como de treinta y cinco anos en doscientos ps..... .... 200.
Susana su hija de catorce anos en doscientos pesos 200.
Felix su hija de site a ocho anos noventa pesos.. 90.
Lady de cinco anos en ochenta pesos..... .... 80.
Jery su hijo de diez y och meses en cinquenta pesos..... .... 50.
——— 770. "
Lady mujer de treinta a treinta y cinco anos en doscientos pesos.... .... 200.
Nina unana de doce meses en treinta pesos..... 30.
——— 230. "

6905.5

Seis Idem que Declara el Difunto Pertenecerle a Saber.

Sara Mulata como de veinte y cinco anos en doscientos pesos.... .... 200.
Ana su hija de quatro anos en setenta pesos.... 70.
Nani nina de quatro anos en quarenta pesos.... 40.
——— 310. "
Cecilia de veinte y ocho anos idem en cineto cinquenta pesos..... .... 175.
Lindes su hija de quatro anos en setenta pesos.. 76.
Nani nina de dos anos en quarenta pesos..... 40.
——— 285. "

Cinco que se llevo el Americano Thomas Hollmes sugun Consta en el Testamento cuya estimacion no se verifico por hallarse ausentes..... .... 7500.5

Con lo cual habiendose concluido la estimacion que asciende

en todo a site mil quinientos pesos cinco reales, se termino esta diligencia que firmaron los Albaceas, Estimadores y testigos.

CHRISTIAN LIMBAUGH,
MILLON DE LA GARRERA,
THOMAS MILLER.

JUAN INNERARITY,
JUAN M DE LA PENA,
WILLIAM M. PHERSON.

276 Dn. Juan Innerarity y Dn. Christian Linbaugh vecinos de esta Plaza y Albacea testamentarios del difunto Dn. Jose Marshall en la forma que mas haya lugar ente V. S. disimos; que aprobado el testamento de dicho difunto por providencia del Tribunal de Veinticinco de Enero del corriente ano procedimos a la formacion del inventario i ala estamacion de los bienes de dicho difunto en los terminos que se ve en las diligencias que hemos precticado y ritualmente acompanamos a esta Instancia y como esta testamentaria trae un conocido enlace con la de Dn. Tomas Marshall tio del difunto Dn. Jose que fue su Albacea suplicamos a V. S. so sirva mandar que ambas se reunan en una sola piesa a fin de conste en ells la parte que ha cabido a los hijos menores del expresado difunto Dn. Tomas de conformidad con lo que dispuso en su testamento que en su consequencia se sirva V. S. disponer la venta judicial, de los bienes pertenecientes al difunto Dn. Jose y de sus tres esclavos nombrados Miguel, Flora y Juana a fin de que con su producido podamos pagar a sus acredores y liquidar la testamentaria por que distro modo se seamos evitary v en esta virtud a V. S. suplicamos se sirva prevenir y mandar como pedimos en justicia juramos no proceder de malicia y en lo nesesario pa.

Otro si: Aunque el difunto Jose declara por suyis en su testamento los seis esclavos que se expresan en la ultimas partidas del inventario i estimacio nombrados Lara Mulata, sus hijas Ana y Mary Custia y sus hijas Linden y Nani. constandonos de esenira oran de la pertenencia del difunto Tio Dn. Tomas lo hacemos presente al Tribunal para que si lo tiene a bien se sirva mandar se vendad con los del difunto Dn. Jose y que su producido reparta entre los menores a quienes en nuestro concepto de Justicia que pedimos ut supra.

CHRIASTIA LINBAUGH.
JUAN INNERARITY.

Panzacola, 6 de Noviembre de 1816.

En la principal y otro si como pide.

JOSE CEVALLOS.

T. MARSENT,
DOMO. SOUSA.

En el Mismo dia lo hicimos saber a Dn. Juan Innerarity y Dn. Chriatian Linbaugh damos fe.
SOUSA. CEVALLOS.

Nota que consta de este dia se fixmado sedulones prevenidos en los paredes tubados damos fe.
LAURA. CEVALLOS.

277 Otra—que contha del nueve se volvieron fixar nuevos avisos senalando costo delos esclavos para el dia veinte delos corrientes damos fe.
SOUSA. CEVALLOS.

Otro—Gu con motivo de no haber podido llegar los esclavos de la habitacion a esta plaza el dia sincelido para su ven ta se suspendio par el dia siguinte veinte y siete damos fe.
LAURA. CEVALLOS.

Otra—Que con motivo de haber llegado a esta Plaza el Sr. Dn. Jose Masote Comandte de ella do orden del Sor. su antecesor le suspendio está diligencia hasta que dicho Senor dispusere lo conveniente para que conste lo anotamos y damos fe.
DOMO. SOUSA. JOSE CEVALLOS.

Otra que por disposicion del Senor Comanote Dn. Jose Masot se dio principio hoy tres de Diciembre ala venta y vernote delos esclavos y demas bienes pertenecientes al difunto Jose Marshall y nombro S. S. para que prosidiera esta venta al Ayudante de Gobierno Dn. Burtura Dubrioiall y para que conste lo anotamos de que damos fe.
SOUSA. CEVALLOS.

En la Plaza de Panzacola a tres de Diciembre de mil ochocientos diezy seis el Sr. D. Dentura Dubreineal Subteniente del Regto de la Luisiana y Adyudante de Gobierno en virtud de la conicion que le esta confiada paso acompanado de nosotros los testigos de asisea a la casa de los SS. D. Juan Forbes y Compania a fin de dar cumplimento a la venta y remate de los Negros y demas bienas pertenecientes al difunto Jose Marshall, segun lo mandado en providencia de seis de Noviembre pa qe y estando en ella predio las llamadas de estilo que se dieron pr el tambor se dio principio en la forma siguiente——

Primeramente se saco a pregon el negro nombrado Miguel el que despues de varias pujas y repujas y repujas se adjudico al Capitan Dn. Marcos de Villers en la suma de tresientos pesos.....360 pesos

Seguidamente se verifico el pregon de Pasa ala bta

Pesos.rl

Suma dela Bta..... .... 360.

La Negra llamada Flora y del mismo modo se adjudico a D. Ramon Castillo e nla cantidad de ciento y ochenta pesos.... .... 160.

Consequtivmte se saco a pregon la negra llamada Juana y en los mismos berrisnos se le adjudico a Guillermo McPharson en la suma de doscientos sesenta y cinco pesos..... .... 265.

278 En el mismo acto se saco a pregon la Negra Cecilia con sus dos hijas nombradas Linda y Ana las que se adjudicaron de la misma manera al Capn. Dn. Marcos de Villens en la suma de tres cientos ochenta pesos..... .... 380.

Correlativamte se pusieron a pregon la Negra nombrada Sara y sus dos hijas llamadas Hanna y Ana las que igualmente y en los mismos terminos se le adjudicaron al expresados Capn. D. Marcos de Villers en a precio de quinientos pesos.... ..... 500.

1685.

I mediante ser las doce y media pasadas dispuso el subsodho Ayudte se suspendiera esta diligencia pa continualrla a las tres de la tarde de dho dia habiendose citado alos concurrentes pa dha ora y lo firmo con los Albaceas y nosotros los testigos de anta con los rematadores de que damos fe.

JUAN INNERARITY,
CHRISTIAN LIMBAUGH,
WILLIAM McPHERSON,
DUBRIEL,
MARCOS DE VILLERS,
RAMON CASTILLO,
DOMINGO LAURA,
JOSE CEVALLOS.

En el citado dia mos y ano siendo la hora prevenida se encontro en el mismo parase en union de nosotros los los testigos de asista el Ayudte comicionado Dn. Ventura Dubrinal con objeto de continuar el remate prevenido y se verifico en la forma siguiente—

Primeramente se saco a pregon un Bote con sus res velas dos remos dos anclotes y su timon y despues de varias pujas y repujas se remato a D. Whitin Baimon en la sums de quarenta pesos 40.

I mediante no haber otra cosa presente para sacar a remate dispuso the Senor Ayudante se suspendiese este acto hasta otra providencia y lo firmo con los Albaceas, rematador con nosotros de que damos fe.

JUAN INNERARITY,
CHRISTIAN LIMBAUGH,
JOSE CEVALLOS.

DUBRENEL,
DOMINGO LAURA.

279 Sor. Comandte into de la Prova.

Dn. Juan Innerarity y Dn. Christian Limbaugh vecinos de esta Plaza Albaceas y tenedores de bienes del difunto Dn. Jose Marshall ante V. S. en la forma que mas haya lugar decimos: que en Noviembre del ano pasado del 814, fallecio en esta Plaza Dn. Thomas Marshall, de quien dicho difunto Dn. Jose que fue su unico Albacea Tutor y Administrador de los bienes de sus hijos menores que declaro en su Testamto nombrados Molly Jose Williams o Guillermo, James Benjamin, Henry David, Tomas y Mathew y con motivo del fallecimiento del citado Dn. Jose Marshall en Enero del corriente ano habiendonos nombrado por sus Albaceas hemos practicado las diligendias de inventaries estimacion de los bienes y venta del os pertenecientos al mismo como se comprueba del Expediente que existe en este Tribunal pero habiendones enterado detalladamte de las deudas gastos y atrazos de ambas sucessiones, encontramos empenada la del difunto Dn. Jose en siete mil pesos mas o menos pues no pudimos asegurar con certidumbre lo que sea a causa de la relacion que tiene la testamentaria de Dn. Tomas con la de su sobrino Dn. Jose pero es constante que la mayor parte dichas deudas como declara el difunto en la clausula 15a. de su testamento proceden de viveres comprados para la manutencion de los mismos menores, de los esclavos y de otros muchos gastos que han casesado desde el referido ano de 1814 sin que hayan lado provecho alguno con su trabajo bien sea por los acaecimientos politicos que hemos experimentado en esta Provincia desde dicha epoca o por el muy corto producto de las cosechas a causa de la esterilidad de la tierra, la soca que se ha experimentado en el corriento ano, o por trabas de dichos esclavos que acostumbrados al uso y costumbres de los Indios son voluntariosos y hacen lo que les parece en cuyo concepto continuando en los mismos terminos dos o tros anos mas ese aumentaran los empenos y los menores quedaran gravados en las harencias que les corresponden y la dexo asignadas su difunto padre por que a los referidos esclavos se les da poco cuidado de trabajar estando seguros de que no les faltara la comida, ves-

tuario y asistencia en sus enfermedades, en esta virtud a V. S. suplicamos se sirva determinar lo que tenga por mas arreglado y conforme a susticia para librarnos de la responsabilidad en qe nos constituyo nuestro encargo de Albaceas y que los menores no quedan perjudicados en la parte que les corresponde juramos no proceder de malicia y en lo necesario fe.

JUAN INNERARITY,
CHRISTIAN LIMBAUGH,

Panzacola, 16 de Diciembre de 1816.

280 Firmense los autos ala vista para la providencia que correspondan.

MASOT,
DOMINGO LAURA, JOSE CEVALLOS.

En el mismo dia lo hicimos saber a D. Juan Innerarity damos fe.

LAURA. CEVALLOS.

Seguidamente lo verificamos en D. Christian Limbaugh y de quedar enterado damos fe.

LAURA, CEVALLOS.

Panzacola,—Diciembre 18, 1816.

Habiendo examinado estas diligencias y en cista de que me hallo en la actualidad sin Letrado que pueda consultar la providencia que corresponde als solicitud que se pretende a hora por los Albaceas pidan estos directamte que pretenden para que se pueda dar la providencia que corresponde y sea de justica.

MASOT,
DOMINGO LAURA, JOSE CEVALLOS.

En el mismo dia lo hicimos saber a Dn. Juan Innerarity y Dn. Chriastian Limbar como Albaceas del difunto Jose Marshall damos fe.

LAURA, CEVALLOS.

Panzacola, 23 de Diciembre, 1816.

Mediante haberse suspendido el remate prevenido en decreto de seis de Noviembre del corriente ano a solicitud de los Albaceas por no estar presentes los efectos que se debian vender, tasense los costos que se han originado desde Fs 55 hasta los conineruvibe p los citados Albaceas con de serva de continuarlo pasado el tiempo de pasenas.

MASOT—
DOMINGO LAURA.

En el mismo dia la hicimos saber a Dn. Juan Innerarity y a Dn. Christian Limbaugh como Albacea del Difunto Jose Marshall y de quedan enterados damos fe.

LAURA.

Tazacion de costos causadas en estas diligs segun esta mandado con arreglo al real Aransel.

	Reales.
Al Sr. Gobornador por sus ononarios dose reales.....	12
Al Subte D. Suenaventura Dn. Bridal por dos asistencias....	44
281 Alos testigs de asesta por dos autos quatro notificaciones....	62
Al pregonero y tambor por sus dilagas.....	16
Al tazador por esta ocupacion y escrito....	5
Total	139

Sore pesos 17 p 3 rrs.

Panzacola, 23 de Diciembre de 1816.

DOMINGO LAURA.

Senor Gobernador:

Guillermo Marshall hijo del Difunto Tomas Marshall y mayor de edad en su nombre, y en el demas llama nos y hermanos hago respetuosamente presente a V. S. que ha llegado a mi noticia hallandome en la Nacion. Cavutis que se han vendido ultimanente a solicitud de Dn. Juan Innerarity y Dn. Chriastian Limbaugh y por disposicion del tribunal algunos osclavos y otros pertenecientes a la testamentaria de midifunto Padro y como quiero que ignore el noticiade exejante proidimento a V. S. suplica tenga a bien mandar se me entregue con calidad de devolucion las diligencias que se han practicado en orden de dho ricicious pa con este Indispensable conocimiento pedir lo que convenga a mi derecho y el de mis estados Hermanos Paza 24 de Dozre 1816.

WILLIAM MARSHALL.

Panza y Diciem C 30 de 1816.

Como pide, Nugo que los interesados nombren un apoderado vecino de esta Plaza con quien debera entenderse el tribunal.

MASOT,

DOMO. LAURA. JOSE CEVALLOS.

En el mismo dia lo hicimos saber a Dn. Guillermo Marshall damos fe.

LAURA. CEVALLOS.

Seguidamente la notificamos a los Albaceas Dn. Juan Innerarity y Dn. Chriastian Limbaugh y damos fe.

LAURA. CEVALLOS.

Cuenta y relacion jurada que nosotros los abos firmados Albaceas testamentarios del difunto Dn. Jose Marshall Formamos de las deudas que resultan contra su testamenearia y la de su difunto tio Dn. Tomas Marshall de quien fue Albacea y tenedor de bienes el citado Dn. Jose de la que ha producido el tracosa de los esclavos desde el primero de Febrero del ano p.pdo. hasta fin de Diciembre del mismo lo que se ha pagado a los acredores a ambas testamentarias: y la quosebas queda a deber en el dia de la fecha a subx.

282 *Deudas de thas Testamentarias.*

	Pesos.	rrs.
A Ramon Gastillo por sus cuentas No. 1.....	1,501	7
A Dn. Samuel Acre por sus recibos No. 2.....	200	1
A Dn. Franca Bonals Id. No. 3.....	198	3
A Manuel Domingues Id. No. 4.....	125	"
A Dn. Pedro Filibert Id. No. 5.....	72	4
A Dn. Juan Bta Aloch Id. No. 6.....	102	4
A Ramon Castillo Id. No. 7.....	43	"
A Guillermo Lamgan Id. No. 8.....	21	5 1-4
A Don Christian Limbaugh Id. No. 9.....	590	"
A Amto Ventura Gil Id. No. 10.....	10	5 1-2
A Tomas Nicol Id. No. 11.....	3	7
A Jacobo Kurker Id. No. 12.....	20	"
A Dn. Juan Forbes y Compania Id. No. 13.....	4,108	3-4
A Dn. Juan Moreno Id. No. 14.....	5	"
A Dn. Jose Maria de la Pena Id. No. 15.....	34	"
A Dn. Juan y Compa Id. No. 16.....	46	1
	7,084	2 3-4

Producto del Trabas de los Esclavos.

Por la relacion que se acompana boro el No. 17 conste han entrado en nuestro poder desde el 1 de Febrero de 1816 hasta fin de Diciembre del mismo ano por el trabajo de los Negros esclavos. 1817, 1 3 |4.

Nota.

Por la Cuenta que se acompana baxo el Numero 8 se ecredita la invercion de los (trece catorce) barriles, 1340 barriles de Alquitran recibidos por pertenecientes a la sucecion.

Pacado a los Acrzedores.

A Ramon Castilla	247	7	
A Dn. Samuel Acre	200	1	
A Dn. Franco. Bonals	198	3	
A Manuel Domingues	125	"	
A Dn. Pedro Philbert	72	"	
A Dn. Juan Bta Aloch	102	"	
A Ramon Castillo	43	"	
A Guillermo Langan	21	3	
A Antonio Ventura Gil	10	5	
A Tomas Nicol	3	7	
A Jacobo Kelker	20	"	
	1,745	5	

283 *Quedan a Deber Ambos Testamentarios.*

A Juan Forbes y Compa	3,452	1 | 2	
A Dn. Christian Limbaugh	590	4	
	4,042	4	
Suma anterior	4,042	4	1-2
A Ramon Castillo	374	"	
A Dn. Jose Ma. de la Pena	35	"	
A Dn. Juan Forbes	46	"	
A Dn. Fernando Moreno	5	"	
	4,502	5	1-2

Importa el total de lo quo se queda a deber segun demostrado la cantidad de quatro mil quinientos dos pesos cinco y medio rls de Plata fuerte lo que juramos en debida forma por Dios nuestro Senor en Panzacola a y ocho de Enero de Mil ochocientes diez y de siete. (Repetition of the last part) lo que juramos en debida forma por Dios Nuestor Senor en Panzacola a viente y ocho de Enero de Mil ochocientos diez y siete.

JUAN INNERARITY.

Sor. Comandte de la Prova:

Don Juan Innerarity y Don Cristian Limbaugh Albaceas testamentarios del difunto Dn. Jose Marshall ante V. S. en la forma que mas haya lugar decimos que desde primero de Febrero del ano proximo pasado nos hicimos cargo de dicha testamentaria procedimos a la formacion de Inventarios de los bienes estimacion de ellos y arreglo con los acreedores de las cu-

entas pendientes; y como dicho difunto era Albacea tenedor de bienes y curador de los menores de su tio Dn. Tomas Marshall que habia fallecido el ano anterior solicitamos y se acordo por el Tribunal se reuniesen ambas testamentarias por la relacion y enlace que tienen entre si, procurando sacar el mayor partido del trabajo de los esclavos, y como la mayor parte de estos osn mujeres y ninos todas nuestras diligencias fueron en vano sea por el corto numero de esclavos trabajadores o por la intemperie del tiempo que ha sido en extemo seco y caluroso por la falta de lluvias, o tal vez por la razon positiva y mas convincente de la aridaz y esterilidad de la tierra que han cultivado de modo que ha sido poco o ningino el provecho que se ha sacado de dichos esclavos por haberse perdido enteramte la cosecha Con este motivo, hallandose empenadas ambas testamentarias en una crecida cantidad ha sido nesecario que esta se aumente para atender al mantenemiento de dichos esclavos, vestirlos y curarlos en sus enfermedades como por otra causas a que ha daod margen la irregular conducta de los citados
284 menores y nos hemos visto obligados a formar la adjunta cuenta y relacion jurada que con sus correspondientes comprobantes presentamos.

Por ella se viene en conocimiento de que la total deuda de las testamentaris son siete mil ochenta y quatro pesos dos y tres quartillos Rs. que solo han podido pagarse a los acreedores dos mil quinientos ochena y un pesos cinco y cuartillo rs quedanod por consiguiente por deber en el dia quatro mil quinientos dos pesos cinco y medio rs de que deberan rebasarse aun los seiscientos noventa y dos pesos uno y tres quartillos que resultan de balance en la cuenta particular del difunto Dn. Jose y quedaron de liquida sinda Tresmil ochocientos diez pesos tres y tres quartillos reales.

Esta era incrementandose progresivamente los correspodientes intereses y aumento de gastos qe causan los referidos esclavos, sin haber modo de qe se ocupen ni produzcan nada en el poco trabajo que hacen por que son muy amantes de la olgazaneria y la mayor parte como llevamos expuesto mujeres y ninos nada aproposito para la cultura de la tierra cuya estirilidad por la falta de lluvuas ha motivado la perdida de la cosecha del ano anterior que quedo abrazada por la fuerza del sol como ha sucedido a los demas habitantes de estos contornos que tambien se encuentran en el mismo caso de no tener en que emplear sus Negros.

Si estuviera en nuestra mano el oder remediar estas faltas que son notoriamte sabidas lo hariamos con toda buena voluntad asi nos encontramos en mayor embarazo y solo confiamos en el recta justificacion de V. S. de que se servira dictar las crovi-

dencias que tenga por mas oportunas en favor de los citados menores bien sea como nos parece vendiendose los referidos esclavos en Almoneda publica para que satisfechas las deudas se imponga el resto a redito redimible hasta que lleguen a su mayor edad los citados menores o del modo que estime V. S. mas conforme a la justicia para evitarles perjuicios y de que podimos jurando no proceder de malicia y en lo nacesario va Otro si: No habiendo en esta Plaza Padre gral de menores y que los del difunto Dn. Thomas Marshall no tienen pariente ni perosona alguna que los represente se ha de servir V. S. nombrarles un defensor que aecepte y jure el encargo de tal para que se proceda con su conocimiento por personas arreglado a justicia que pedimos ist supra—

Otro si: Conviene a nustro un defensor de los herederos de Dn. Jose Marshall que se hallan ausentes para que entienda en lo que a ellos corresponda, pareciendonos tambien si V. S. lo tiene a bien que puede serlo para evitar los credidos costas que se causarian el que se nombre por defensor de los men-
285 ores por que no creemos haya incompatibilidad en el asunto. pedimos ist supra.

JUAN INNERARITY.

Campamto de Barrancas 22 n Febo 1817.

Por presentado con las Cuentas que acompana, unanse a los autos de la materia reservandose la providencia que corresponda en la principal y por lo que tocante al primero y segundo otro si como la pidan nombrandose al efecto pa uno y otro el Capitan del Regimento dela Luna D. Benigno Garcia Culdxon a quien su acceptacion y juramto se le entregaran los autos pa que en su vista promueva lo que juzgue de justicia en favor de los subsodos menores.

MASOT, JOSE CEVALLOS.
DOMINGO LAURA.

En el mismo dia nosotros los testigos de asista pasamos a la Plaza de Panzacola e hisimos saber la prova que antecede a Dn. Juan Innerarity y a Dn. Christian Limbaugh y de quedar enterados damos fe.

LAURA. CEVALLOS.

Seguidamte la verificacion pasando a la morada del Capitan del Regimiento de la Liusiana Dn. Benigno Garcia Calderon, quien enterado de elaa nos contesto que a cause de sus muchas ocupaciones en el actual servicio no pude acceder ni hacerse cargo de la comicion que se le hace por el Tribunal y para que asi conste lo ponemos pr diliga de que damos fe.

DOMINGO LAURA. JOSE CEVALLOS.

Sor Comte. into de est Prova.

Dn. Juan Innerarity del comercio de esta Plaza, primer Albacea de Dn. Jose Marshall en la forma que mashayalugar ante V. S. digo que dia veinticinco del corrte al amanecer profugaron de la casa de su morada una familia de Negros de los de la peertenecia de la sucesion compuesta de un Negro una Negra y sus tres hisos que sospecha con justo fundamento hansido seducidos por alguno pues aunque han practicado eficaces diligencias para averiguer el camino que han tomado no ha sido posible conseguirlo y presumo de que succeda lo mismo con los demas esclavos de la citada succesion e ncuia virtud a efecto de ponor a cubierto su respondabilidad y la del 2d Albacea Dn. Christian Limbaugh que se halla ausente en su habitacion lo hace presente al Tribunal a fin de que se sirva determiner a cerca de la solicitud que tiene hecha Pa qo se proceda a la venta en Almoneda publica de los referidos esclavos y por este medio evitar
286 los perjuision que se estan orogando en la manutencion de ellos pr tantom a V. S. suplico se sirve disponer y mendar como llevo pedido por mi y en nombre del expresado segundo Albacea por ser de justicia y juro en lo nesesario en Panzacola 26 de Marzo de 1817.

JUAN INNERARITY.

Campamto de Barrancas 28 de Marzo de 1817.

En vista de lo expuesto por Dn. Juan Innerarity no no pudiendo el Tribunal acceder a su solicitud interim no haya alguna persona que quiera encargarse de defender y curador de los menores que con su susencia consienta en lo quo se pide y sin embargo qe fue nombrado para el efecto Don Benjamin Garcia Calderon Capitan del Regimto dela Luisiana y qe este por sus legales ocupaciones se he renuncio; a fin de que no se verifique los perjuicios que expone esta parte se nombra pr tal curador y defensor do Thos Encargos A de Francisco La Bonabs a quien se le hara saber pa su acceptacion y juramto y en aguado buelbar los dilig al vista pa proveer lo quo correspondan.

MASOT,

DOMINGO LAURA. JOSE CEVALLOS.

En veinte y neeve del corriente mes y ano nosotros los testiga de asista pasamos ala plaza de Panzacola tres distantes de este Campamto y notificamos la providencia que precede a Dn. Francisco Bonales el que enterado de su contenido nos contesto que (que) nos contestaria al siguiente dia si podia o no acceptar dicho encargo: y para que conste lo ponemos por diligebcia de que damos fe.

DOMINGO LAURA. JOSE CEVALLOS.

Seguidamte comparecio ante nosotros los infranscritos tesigs de asista Dn. Franco Bonales y nos expreso que en virtud de la respuesta que nos habia dado la tarde anterior y afin de darle cumplimento ala providencia del Tribunal nos pedia pusiesemos por deliga la siguiento—Queriendo acedhedon ala Subsecion del Difunto Jose Marshall de cantidad de pesos no puede de consiguiente acceptor el encargo de defensor y curador de los menores hijos del difunto Thomas Marshall lo que para que asi conste lo verificamos firmandolo con nosotros de que damos fe.

DOMINGO LAURA.

FRANCO BONALES,
JOSE CEVALLOS.

Campto de Sn. Carlos de Barranca Able lo de 1817.

Siendo necessario evitar mayores costas a esta Subces-
287 ion no teniendo otros motivos que puedaeronerarle del encargo que se la ha hocho a Curador de los menores y defensor de los bienes del difunto Dn. Jose Marshall y de su Tio Dn. Tomas requiir as de e D. Franco Bonals deno aceptarlo para el veneficio de los.

Minores herederos ansentes y acredores y con su resultado vrargase para la providencia que corresponda como esta prevenido.

MASOT,

DOMINGO SAUSA.

JOSE CEVALLOS.

En el mismo dia nosotros lossliteges de asist-a para mas ala Plaza, de Panzacola tres leguas distante de compam-te, y le participamos la providencia, que antecede a D-n Frances Bonals, y entenados ella nos conterlo q-e, en obedicim-to, ala que sele previene, devia aceptar, y acepto la comision que en ella se expocia, y que pa, su constancia juralea como juro enfiditidad, y de proceder en toda segun su le al saver y entemer, firmandole con no satros de que damos fe.

FRANCO BONAL,
DOMINGO SAUSA, JOSE CEVALLOS.

D-n, Franco Bonals vecino y del comeverso de esta Plaza, detensor y envados nombrado por el tribunal de los Menores Hisos del defunto D-n, Tomas Marchall y de los heredoros ansentes de su sobrino D-n, Jose ante V, L, como mas lugar hal la en derecho, paraseo y trigo que, habiendo examinadeconla eserupulosidad que corresponde las diligencias practicados por fallecemiento de D-n, Tomas y D-n, Jose Marshall encuen tro

que amibas sucesiones resultabon deviendo lita vainte y ocho de Enero ultimo, quatro mil quinientos dos pesos, cinco reales y medio segun se deduce de la relacion juiola presentada por el primer Albacea D-n, Juan Innerarity convente, a 162, y haviendose hecho un tres de deziembre anterior, almonedad de siete esclavos y un Bote produxeron estas segun consta de las p56 y 57 un mil sete cientos veinte y cinco pesos, los que medios a las mil ocho cientos diez y siete pesos, siete reales tres quartillos de otro que abone el mismo Albacea, en su citado relacion pevala a p 62 cuelto forman me total de tres mil quinientos quarenta y dos pesos, siete reales, tres quartillos las que deducidos de los siete mil ochenta y quatro pesos, dos reales, tres quartillos que aparacen deburse, por la mismo relacion de paxas 62 quedan solamente, por pagar tres mil quinientos, quarenta y un pesos tres reales y denostrandose ser las quatro mil quinientos dos con cinco y medio ql, dexoni dicados se ha de servir VS mandar que el precetado primer Albacea D-n,
288 Juan Innerarity, presente relacion jurada con sus correspondientes comprobantes, con exprecion de los cobros y pagas hechas y de la que a cada uno de los acrebedores aampas suecesion se les vista rebajando a D-n, Ramon Castillo las veinte y siete pesos sus reales que se notan de deferencia, de su cuenta a la que en la dansula 6a del testamento de Dn Jose Marshall declaro como tambien los ciente veinte pesos, imperte de las tres mil piez, de madura que al final, de la propiaclausula se indican, serificando la mismo con las damos que el propio testameto expresa sobre la recividoa quenta de la que declaro deberles, por cuya me dio podra saberse el actual estado de la sucession y de la que combenga representar enfabor de los que, la hago y al lagro de tode.

A. V. S. Sup-co se serva inandos hacer la q-l, alevo pedido que es justicia que fide pero ne proceder de malicia y en la necesaria V-a, Otro si: En vista de la representado por el primer Albacea en sus escritos de paxas 64-y 67, y para evetaa las perpiscios que pueden sequirfetante amis representacions, como a sus acre hedores acerca de la fuga de las negros se he de servis V. J, inandar se fix en cedulones citando para el remate de las sierbos que hasa existenly dentro de treinte dias para que puedainepor llegar.

A noticia de las que queran comprar, y se encuentren a la presente ansestes de esta Plaza, pudiendo en el intermedio sabersa a la que azunden las dendas pendientes para con arregla aello hacer la venta de contado de los que se consideren prasis o y los instantes a Plaza, de sus mejes q-l, es funticia que fido, ut vetro.

Otro si: se ha de servis V. S, igualmente mandar q-l. D-n,

Jose Innerarity haya conducir a esta Plaza, todos las enveres que constan del en de entario de 147 a fin, de poder hacer almoneda de allos, y evitar su astravis quees justa ut supra.

FRANCES BONAL.

F Carles de Bon, s19 de Abril de 1817.

En la principal primero y segundo otro si como la fide exandose por las testigos de asistencia los cedulenes en las parages a custambrados con alberten cia de traherse ala vista las diligencias p-a senalar el dia, y hava envemate.

MASOT.

DOMINGO SAUSA, JOSE CEVALLOS.

En el cuado dia mes y ano las hicerros saven de D-n, Frances Bonals. les damos fee.

SAUSA. CEVALLOS.

289 Seguidam-te, la verificamos un D Juan Innerarity Damos fee.

LAURA. CEVALLOS.

Nota:

Que con esta | ha se ferason las cedeslines que esta prevendo en la ante prevanede en la anticed-te, providencia Panz-a, veinte y nubeen Abl, 1817.

SAUSA. CEVALLOS.

Panzacola, 2-d Mayo de 1817.

Mediante hallerse a tormiro de los tres mas dias que se solicite ql, endeferesor, y Curador de los Menores de D-n, Marshall, fireme cedulones citandose de varnalef-s el lemer dos de Junio del com-te, mes y ano.

MASOT,

DOMINGO SAUSA, JOSE CEVALLOS.

En el mismo dia nosotros los testigos de asistencia la vecinos saver al defemor D Frances Bonal damos fee-

SAUSA. CEVALLOS.

Seguidante la verificarnos, en las Albacea D- Juan Innerarity y D-n, Christian Limbough y de que dan enter damos fee.

SAUSA. CEVALLOS.

En la Plaza de Panzacola a dos de Junio de mil. ochocientos diez siete nosotros loa testigos deant-s pasamos ala morada deD Juan Innerarity donde temamos que deviin ser vendid las pertenentes alas subsesions de las defunto D Tomas, y D Jose,

Marshall can p gieto, los azuse conduesr alas casas de este gover-
nones a las diez dela manana sundo este havis como a las siete
y media de ella el que nos conteste que estas a mas bien y que
la verificaria de dha hora y p que todo comte le panenos p-r,
dilig. a de que damos fee.

DOMINGO LAURA. JOSE CEVALLOS.

En el mismo el S-or. Comand-te dela Provincia nos llama
pregustan deros quales haren las motivos de que los Negros
que de hand de vendese nose ha Havana en la hora y litio que
se havia Senalad.

En la providencia de veinte y nuebe del p-le, p-a, I haviendo-
le contestada de S, S-a, ignorabamos el motivo mando en el acte
al comisionado Salvador, Brito puese encontenente ala Casa de
subre dho Innerarity P que imeditam-te, las hierrene conducir
a es la comandanesa a fin se pro cedure sin dilacion al remosla
prevenido la que sin embargo o de haver la verificadaasi
290 dhe comisionada nos complio la mandad hasta cinca de
las onze, y media py p-n, que toda, conte mando S S le la
panesemos p-r, diligencia que firmo de que damos fe, nosotros
las testigas de amit, a y sin embanso de que no medio mas que
media hora si publicaros Pa su vemate dos familias las que nose
adjudicaron alos ultimos poslorno pr comederarse no llegar a su
digitimo valor y severlo pedido asi el defereson.

MASOT,
SAUSA. JOSE CEVALLOS.

D-n, Franco Bonal curador y defensor de los menores evade-
ros ansentes a la suecesion de los defunto D-n, Tomas y Dn Jose
Marshall ante V Sd del modo mas conveniente paresio y dig-o
que con objeto de defenderle d dos loa derectos q-a estos les
complete y sin embargo de que tuva a la vista las diligencias
para verificarlo no hece en equalo epoea de mi representation el
obise que a la presente me es formoso verificar y siendo el motivo
principal de qe aunque observe, el bap, precio esclavos no hab-
iendolos vista mi tenido conservemente de ello hasta el momento
de procederse a su remate me obligo mi responsabilidad el hab-
erlo hecho presente a V, S, vercalmente con protestestas de
hacerlo prescrite como la verifico pr todo laqual aA, S, suplico
que en merito de lo representado de sirva mandar, se proceda
nuvie estimacion de las indicavos siervos haciendo seles a los
Albaceas nombre por su parte las personas ql crean de su satis-
facion haciendola y pl la mia el al vecino de esta Plaza, Dn
Eugenia Sierra para que se verifi que la mayor brevedad como
asi mismo compla con la antrego de la relacion jurada ql he
solicitade en mi exercite de fovas 10 portunto y a su legro que
obsequio de las partes que represento.

A, V, S, suplico se livrea proveher y manlar como llevo pedido por ser asi de pusticia ql esta que solicite con pretesta de costas y pero no procedar de malicea de Panzacola 2 de Junio de 1817.

FRANCO BONAL.

Panzacola 2 de Junio 1817.

En vista de la que esta parte representa y es merito que para ello presta por havien observada a primera, vista que los esclavos de qe que se trata, fuerones timados en muy paros precios raden faborable alas menores y herederos ansentes hagaseles alos Albaceas, que nombre le persona que tengar, porcomberente para que se verefer, que nueva estimacion en union del, que dera nombrada el Albacea requirien dose les, a aquillos egualmente presentin la cuenta que seles pido denteo de segundo dia.

MASOT,
DOMINGO SAUSA, JOSE CEVALLOS.

291 En el mismo dia la heanimos savor al Defer Sor. D Franco Bonal damos fee.

SAUSA. CEVALLOS.

Segudamen-teparamos ala moroda, del pr Albacea D Juan Innerarity y le enteramos de la providencia que, antecede y en su contestacios, dixo que nosele obren reparo, alguno en que se procede ala nueva estimacion que solicitas D Franco Bonal curador y de femer de las menores y heredores ansentas. de los subsesiones de D- Tomas y D jose Marshall, sin embargo de que prova las costas y perjuscios que puedan resulta y desde luego esta conforme p-r, por se y p-r, la del seg-de, Albacea D Cristian Libough en que ser el mismo D Eugenio Sierra a que estime los esclavos de cuendo expresar al mismo tiempo que aunque sele hizo saver la providencia ya hase algunos diaz de que, devia formas otra relacion purada no haviendo, tenido los antos originales, savre que deva fundarla no hasiendo posible cerificarlo pr la que suplica al tribunal se, serva mandar sele fron quien pld, dar el divido complimento esto dia pr vespuesta que firma con nosotros los testigos de que damos fee.

JUAN INNNERARITY,
DOM-O, SAUSA, JOSE CEVALLOS.

En la Plaza de Panzacola en el propio dia mes y ano, comparicio, ante S, S, a D Eugenio Sierra prensto nombrido pr, ambos partes quien despues de enterado de la comision, que sele confirmoy previo el juramente presto de proceder bien y

fidm-te, dire que necesitare para ello el que los esclavos se encontraser en estaoficio, y a mayor abundam-te, una nota que asi conste mando S S-a sepuise pr dilig-a, que firmo con dho D Eug-o, Sierra de que damos fee; nosotros testigos de ant-a.

MASOT,
EUGENIA ANT-O, SIERRA,

DOMINGO SAUSA,
JOSE CEVALLOS.

Relacion que forma el abajo firmado, como Albacea, del defunto D-n, Jose Marshall, de los esclavos previenentes de la succession de Dn Tomas Marshall su fie de quien fin Albacea el citado Dn Jose las edades que se les han considerado, sobre poco mas o menores oficios y calidades, como solicita.

Dn, Eugenia Antonio Sierra perito nombado para nueva estimacion y damas que puida convenir a saber.

292 *Esclavos existentes.*

Porque de quarenta anos, su oficio wabajador del campo su calidad algo estupido.

Juana su muger de vinte y cinco a treinta anostrabajadora en el campo su calidad regular, exegenen su hiso de ocho anos enfermiso Maria o Peginhisa de los mismo de quatro nanos Penny his o de quince meses.

Eliza o Lisey: de veinte y un anos trabasadora del compo su calidad buena.

Dick; de quarenta y uno anos, su oficio trabasador su calidad regular.

Pequin su hiso; de trece anos.

Paciencia id de nuebe anos.

Paxi id, de seis anos.

Juan id de quatro anos.

Estos quatro son hiso sed lo Dick, y de la negro Lucia que falbicio en.

Nathaniel de trece anos, sin oficio de calidad buena.

Negro Mandi; de treinta y seis, anostrabajadora. del campo, su calidad regular.

Susana su hiso de quince anos sin ningun tatento.

Felix hiso de la mismo mindi ocho anos.

Ladi Idem; de seis anos.

Pixy de treinta y un anos; sintatalento trabasadora del campo su calidad regular.

Juan su hiso de dos anos.

Esclavas entragados al Alestur.

Benjamin Marshall hiso en-er del defunto D-N Tomas por haverlosreclam-d.

Levi de treinto y un anos. Franco su muger de veinte y seis anos. Maria hiso de los destros de tres anos. Edmond de treinto y un anos. Judie su muger de treinta anos. Lucinda su hiso de tres anos. Edward id- de ano ymedia. Bumbri de veinte y un anos.

Esclavos vendidos en 3 de Dre. ulto. como consta a p 56-y 57, de los dilig.

Miguel de dies y ocho anos al cap-n, Marcus Devilliers negro Flora de treinta y cinco anos a, Ramon Castilla, Juanade v de veinte y seis anos a Dn Marcus Devillers.

Ana, su hiso de cinco anos al mismo Harry de dos anos al mismo. E

Cecielia; de veinte y nuebe anos al Mr. Dn, Marcus Develiers. Linder su hiso; de cinco anos Id. Harry id. detres anos al mismo.

293 Esclavos que han profugada despues del segundo inventorio y estimacion.

Cloe: de veinte y cinco o treinta anos. Felipe: su hiso, de ocho anos, Tomas de quarenta y siete anos. Judie, su muger; de quarenta y uno. Ana su hiso; de dies y dies anos, Meli id; de calorce anos. Samson de dies y ocho anos. Pedro de quarenta y un anos.

Cinco mas que robo el Americano Tomas Hollmie Cellos nombres se ignora.

Esciavos Invertos.

Negro Lucia de treinta y un anos; era la muger del nombre Dick y fallecio en Febrero del ano Pr, Pr, los expresados cinquenta esclavos son los mismoque se inventaria.

Non y estimaron en cinco y dies y ocho de Febrero del ano pr, pr, segun consta de las diligencias dela testimentaria a 48-49-51-52-y53, Panzacola siete de Junio de mil ocho cientos dies y siete.

Juan Innerarity.

Dn, Juan Innerarity Albacea testamentario del defunto Dn Jose Marshall en la forma que corresponde a V. Supengo q que para llmar los deseos de Dn, Eugenia Sierra Perito nombrado para la estimacion de los esclavos existentes en la diligencia que se la ha hecho saber, ha formado la relacion que presenta e expecificando sus edades, oficios, y calidades segun se hapodide averiguar y consta del inventario en su virtud.

A. V. S suplico se Sierra haver por presentado dicho relacion y proven la que sea de justicia que fide juro-ra.

Otro si; debiendo reformar la relacion jurado en las terminos que solicite el defensor y curador de los menores del defunto Dn Tomas Marshall en la forma que solicito en su escrito de p 70 y dispuro por la providencia de V. S. que recago a el siendo una operacion embarazosa pr deberse reformar tambien las cuentas de cada uno de los acrudores. a decha succesion a querenes se han hechopago y escegerles los documentos justificativos, suplico a Le Serra conceder el termino que se considere necesaro a fin de poder dar complimento, con la exeactitud que se requiere; pido ut supra.

JUAN INNERARITY.

Panz-a y Junio 10 de 1817.

Para mejor procertas lado al defensor con la.
Dela eron que acompano.

MASOT,
DOMINGO SAUSA, JOSE CEVALLOS.

294 En el mismo dia la hiso mas serven de D Juan Innerarity por medio del orro lenigo de acinta encebis connide damos fee.

LAURA,
CEVALLOS.

En el citado dia la hisimos seven al defensor Franco Bonales damos fee.

SAUSA.
CEVALLOS.

on

Sor, Gov——,

Dn Franco Bonals de fenser y curador de los heredaros menores hisos D Jose y Tomas Marshall ante V. S contestando al tres la de que se me ha contenido del escuto presentado pr Dn. Juan Inenrarity como Albacea del primero nombrado digo que respecto a haber presentado dicho Innerarity la oha succesion con exprecion de sus edades oficios y Calidades seg-n, le previno puede V. S. si lucre servido mander se la entre que a Dn Eugenia Sierra perito nombrado pa la estinar-ne D chos survos a fin D qe conla muger prontitud cerifique dicha estimar-n fenandose cedulo nes citando pr V. S si lucre servid dos dias pa la entrega de la relacion jurado qe deve presentaa documentoda segun solicita pr el otro si de su citado escrito; en cuya virtud,

A. V. S. suplico se serva mandar haser como lleve pedido qe es justicia qe fide Panz-la 10 de Junio de 1817.

FRANCO BONAL.

Panzacola de Junio de 1817.

Consequente ala representado presta parte y siendo arreglado a justicia firense cedulones en las parases a constumbrados citandose de remate pa el savade catore de los core-tes, el que se verificaza desde las diez hasta las dose y media del citade dia; y pr la que Respecta ala solicitud que hace sele conceda termino pa la presentatior de la relacion jura la que devia y a haverlo verificado sel pronogan tres dias perentori as, con de negacion de otra.

MASOT,

DOMINGO SAUSA, JOSE CEVALLOS.

En el mismo dia nosotros las testg-s asist-a paramos ala monceda de Dn Franco Bonal y la envenamos como deferrion de lso las comedero. y mesiones de la subercion de los defunto Tomas Marshall la proseidencia que contecede damos fee.

SAUSA, CEVALLOS.

Seguidam-te, verificamos la mismo dilig-a, en D Juan Innerarity damos fee.

SAUSA, CEVALLOS.

295 En la Plaza de Panzacola Ju citado dia mes y ano ante el S-or, Comand-te, de la provin D Jose Masot Coronel del Pl Cuerps de art-a D comparecia de Eugenia Ant-o, Sierra pui-te, nombrado pr ambes partes pa la estimacion de los esclavos de las subersion es de los, Defuntos Dn Tomas y D Jose Marshall y estan de estos reunidos en la Galeria de la Casa de Gov-o, mando S. S eque dho Dn Eug-o. Sierra procedien ala estimacion de otros esclavos la que verifecoente forma Sig-te.

	Pesos-rr
Primeram-te estimo la negro Jorge de edadde quarenta anos. de oficio del campo y fue-abaluade de edad en	550,
Juan su muser de treinta anos de edad en...	400,
Exeguel su hiso de ocho unen....	180,
Maria o Pegin nos presentos, Jenny hisa de Juan de quince muser....	90,
Eliza de veinte y un anos trabajadore, del campo.... ..	450,
Dick nos presente.....	400,
Pegin su hiso de tres anos....	390,
Paciencia id de anosen....	300,
Paxi id de seis -idem....	190,
Juan id de de quatro idem.....	200,
Nathaniel de trecie anos sin oficios.....	400,
Para ala del frente	3650,

Suma del frente..... 3590,
Negro Mindy de veinte y seis ano trabajadora, del campo.... 320,
Susana su hisa quince anos en..... 430,
Felix—id—de ocho anos en 240,
Lidy—id—de siesanos en..... 200,
Jeri—id—dos enos y medio en..... 160,
Lidy negro de treinta y un anotravajadora..... 400,
Jua su hiso de dos anos en..... 130,

Total.. 5450,

Y no haviende mas esclavos en otra casa presente que estimar mando SS-a se seuspendien este act-a que firmo con dho D Eugenia Sierra de quidamos fe, nosotros los testigos de asis—a.

DOMINGO SAUSA, JOSE CEVALLOS.

En la Plaza de Panzacola a catorsee de Junio. de mil ocho cientos diez y siete estando el sor. Comand-te de la provincia en union del defensor y curador de los menores como amtmismo el Albacea en los casas, de Govierno, a efecto de de en
296 complimente al remate prevenid y previs las llamados de estillo la que sedenion pa el tambor sedio principio el viendose decho saven a los congre ventes que se rendian las esclavos que a contimacion se expressarin con la condiciones legitimo valor y las del norte de America con el desciento del diez pr ciento sin asegurarles detachas vicion y enformeda des sino tal como se comporta-tey que se venden arreglad alos titulos en idioma ingles qe se encon tra nonal fallisem-te de los defuntos sies anos y es como si que.

Primermente ql sace a pragon el negro Josfe, y despucide varias pryas y repagos sin que persona alguna ofrecien mas que tres cientos quince pasos que dava Elias Loid y Comeder andose pr el Albacea y defensor, y hera demasiado su estimacion y que Jamos pedria llegar a los dos vercion de ella fueron de mais con ine acuendo que se adjudicare al citad Dn Elias Loid en tres cientos quince ps... 315,

seguidamente se presente a dho fin la negro Juan y su hiso jeny y despues de pertor se remataron en el dho Loid en tres cientos veinte y nueve ps. 329,

Del mismo modo se el judico al meneronado Loid un negrito nombrado exequiel en cianto novienta pesos 190,

Consequente se adjudico al subro dho Loid una negrito nombrado Paciencia en doceentos noventa y cincops por ses el mejor pestor 295,

Consecutiva mente se saco apregon a la negra Eliza, y despues de varias pugas y repugas como mejor pertor se adjudice

al tom-te de la Lan d Dn Carlos Devillers en quatro cientos cinq-ta y cinco pesos 495,

Y siendo pasado de la urramadodho sor. Com-tese suspendose este acte p continuarle alar,

Pasa ala vta 1584

Suma de la B-ta 1584

quatra de esta tarde, y para que asi, conste mande S S a susp ien pr dilig-a, que firmi dho Albacea y curador, y nosotros de que damos fe.

MASOT, FRANCO BONAL.
DOMINGO SAUSA, JOSE CEVALLOS.

En el mencionado dea siende la hora simalade y reunidos en el para qe citado los expresados Albacea, y curador y haviendos verificado las llamadas de estile; se saco a remote pr valed el programo Jose Cartes la negra nombrado pagin y sin embargo de varios pagas y repugas siende el mayor portor el men-
297 cion ado Dn Carlos de villers sele adjudico, en tres cientos ochenta y cinco ps. 385,

sequidante se saco a pregon el negro Dick, y se remate como mejor porter en T. B. Reed en tres cientes sesenta y un pesos 361,

pasa al frente ....2330.

Suma del frente ....2330.

Consecutivamen-te, y del mismo modo se saco pr pregon ala Negro Lidy a sus tres hiso paxi de seis ano, Juan de quatro y Juan de dos se adpidicaron pr ser el mejor portor en el mencionado T. B. Reed en sete cientos veinte y cinco p-s,.. 125

Su a ntinenty se verifico la mismo en el Negro Nathaniel y fue adjudicado como mejor portor en el subro dho Dn Carlos devillers en quementospesos,..... 500,

Del Mismo modo se saco al efecte a la de sesi anos y Teri, de dos y medio v fueron rematados en el expresado D. Franco de Vellers en quatro cientos setenta y cinco p..... 475

correlativamente se verifico el remate de la Negro Susana en el mismo D Carlos de Villers en quatro cientos quarenta y cinco ps-s, 445,

En el mismo acto se puso a remate la negro Felix de ocho anos de edad y se remate en D Franco Vidal como mejor portor en docientos cinquento pesos, ... 250

4725

Y no haviendo mas esclavos que vender de la pertencia de espar subresiones, mando S S a concluir este que firmo con el Albacea y curador y nosotros de que damos fe.

MASOT. FRANCO BONAL.
DOMINGO SAUSA. JOSE CEVALLOS.

Panzacola 16 de Junio 1817.

En el vista de que seme acava de dar partes en esta momento pr el temente retirado D Jose Norigo que el Negro nombrado Libay le acavava de decir que el Nombrado Elias Loid se havia llevade varios Negros ala subsesion delos Defuntos D Tomas, y Dn Jose Marshall, y que sabe su paradero, procedase pr mi atomar una declaracion instructivo a dho negro sirviende de Interprete al efecte el subteniente, D Buena .... Dubrenil con los mismo testigos actuales.

MASOT.
DOMINGO SAUSA. JOSE CEVALLOS.

En el propio dis mas, y ano ante S S a comparecio el Negro nombrado Rivay, a quien por medio del Interprete nom-
298 brado se receivo Juramente, que hizo pr medio de este, previo el que, preste el citado sub-te, baso el qualoficio decir berdad en la que su pure y fuene preg-d y siendole pr el tenor del parte y dia a S S D Jose Norego Dixo que hay haviso a dho temente que el abitantenom brado Elias Loid se havia.

LLevado seis esclavos de la casa de D Juan Innerarity havra como dos meses y que estos eran tres barones y tres embras llevandose asi mismo, al que declara hasta veinte y cinco millas de esta plaza con el objecto de pasar dho esclavos pr el Rio Escambia regresendose imedialmente ala Havitacion del estad Loid pa tener erudadode ella y responde.

Preg-d, seis esclavos del citado Loid o quien es su aneo Dixo que segun dice Loid es esclavos suya peso que el no conocemas ano que al mestizo Benjamin Marshall y responde.

Preg-d si save en donde se hallan aclualm-te las esclavos que dice selleve Elias Loid Dixo que hoyo decir mednochea a Loid havlande este con su mejer, y algunos Americanos que havit vendido las seis esclavos, parte de ellos en tenesy y parte en otro parte oy en el o asi mismo que vice llevare al expensente al mismo para qe luego que recognir algunos otra en esta plaza y particularmente de los companios de Milici la havana, pa poderle pager a su ano luego o que las venderse, y responde.

Preg-d, si conse o sabe los nombres delos Americanos que cita Dixo que conore a Albres Bolden la obligacion de Jose

Marshall (mestizo) pr pagor dies voca con sus cete eralanda en p 15..... 150
Dos Mulas 150
Una Vaca mulada 10
Cascas vetenelios tomados de la Habitacion..... 79.5

389.5

Y a Joseph Fiet sobrino o parenite del Coronel Philips y que ignora sus paraderos, ceumentan de que no havia dado parte hasta a hora per no haver encontrado una persona de satisfacion a quines comunecarule suplicando al tribunal sele tengo enconuderacion en que no buelba a llevarlo dho Loid mediante a esta declaracion que adad contra el que es quante tiene que desis que lo, dho es la vendad acargo del Juram-te que a prestad en la que se afirmo y ratifico laxada que la fue pr dhe Interprete esprarano ses de veinte y ocho anos de edad y no firmo pr, no saven hizolado Senor, e Interprete, y nosotros de que damos fe.

MASOT BUENAVENLURA TRIBUNAL.
DOMINGO SAUSA. JOSE CEVALLOS.

299 Panza 16 de Junio de 1817.

Agrequere la nota que acava de presentarme el defensor D Franco Bonal y dese vista a este y al Albacea para que expangar con vista, de la declaracion y de dho nota le que crear de justicia—

MASOT,
DOMINGO SAUSA. JOSE CEVALLOS.

Panzacola, 17 de Junio de 1817.

En vista dela representado pr estas partes pongase en seguno arreste a Elias Loid sin comunicacion es la Rl carzel como asi mismo al negro nombrado Levay; solicitese pr el Minestre de Justicia el paradera del de los Americanos m-tres Baldwin y Dn Jose Fiet citandolos compar escan en mi tribunal alas quatro de esto tarde; haciendose saver del mismo modo alas Albacea presenten sin dilacion alguna la relacion jurada que ha solicitade defueson, y les esclava preceplуad puro que ala mayor orevedus se liquide el y reple que se adenda y se deposite, el vista en cerca preales; furine cedulotus y que se verifi que la venta de los efectos que dande estas subresiones.

MASOT,
DOMINGO SAUSA. JOSE CEVALLOS.

En dicho dia la nisimos saver b Dn Franco Bonales damos fe.
SOUSA. CEVALLOS.

Segundam-te, la verifificamos en Dn, Juan Innerarity y D Cristian Limbough damos fee.

SOUSA.

CEVALLOS.

Panzacola, 19 de Junio de 1817.

Consequente alo que me ha informaale el defensor y Albacea sabre que los Muscebles son de muy poco valor y de que estos le hallar la major parte inufiles se permin en que se verifi que la venta de ellos en la casa del Albacea comisionandose de efecto alas testigos de ante ferandose previen-te havisor para el savado vesme y un.

DOMINGO SAUSA.

En la Plaza de Panzacola a veinte y uno de Junio de mil ocho cientos dice y siete nosotros los Innerarity a efecto de par complimente ala providencia, que antecede y relumdos en ella los Albaceas y defensor si dia principio al remate de los efectos sig-tes Primenamen-te se sacaron a remate tres se elas y privio los llamados de tambor y, q vos de pregonero
300 tres sel los de Madera unadas las que despues de varios pupas y rapujas se remalron en la cuartenona.

LEVENE MELITA.

Ps....Rl
3.....

Segundamente sasacio a remate un fue ello mediano un en que un tormilledos terasas una carrajo y des, Livras enydsoma yng-s las que del mismo mas lo fueron a adjudicados en Dn Carlos Devillers en treinta y quatro.....34,

Y continente se saco pa mismo efecto ocho pevehas oiejas los qué fueronad judicados e dho D Carlos Devillers id-1-4

Del mismo mode se puso de manifesto y se pegonoron tres ara dos de hierro una sarten dos achos y una cervia todo la que, se adjudico como mujer porter en el mencionad D Carlos de Villers en dos pesos-2, y gualmente se saco a pregun una si erra de mano grande y quatro hazes o dalles en se remataron en ll ante dhe Dn Carlos Devillers en sus p..6.

46,4

Y no haviendo otro casa que rematre se concluyos este acte que firmaron de los Albacea, Curador y defensor y nosotros de que damos fee.

DOMINGO SAUSA. JOSE CEVALLOS.

Whereupon counsel for plaintiffs, immediately after the conclusion of the offers made by counsel for the defendants, and in

obeyance to the ruling of the said Judge, did then and there object to the admissibility of said documents offered, on the following grounds:

1st. That Gabriel De Rivas was living at the time of the pretented sale, and that the said protocols, was and is fraudulent, spurious and forged.

2nd. That there is no proof of the authenticity of said documents of the official capacity, or of the signatures to said documents.

3rd. That there is no proof that said documents or any purported transfer made therein, were ever recorded, either in the registry book of the Spanish Regime of West Florida, or in any of the record books of the American Regime, and the same is therefore null and void and of no effect against plaintiffs.

4th. That there is no description in the said pretended transfer made therein of the property at issue in this cause. That no Plat is annexed thereto; that the property referred to therein,
is not described by metes and bounds and other des-
301 criptions resulting from the title of Gabriel De Rivas, as
required by article VII. of the regulations of Morales of the Spanish Regime and without which, said title is absolutely null and void.

5th. That the Pensacola City Company, or any guarantors as assigns thereof privy to said company, are now estopped from contending that these said papers termed the "Protocol," were or are original Spanish records or ancient documents, as in the suit of E. J. Caro *vs.* Pensacola City Company, United States Circuit Court of the Northern District of Florida in 1894, the said defendants claimed in their answer that said documents had only been discovered after said filing of said suit, which allegation in said answer, is in words and figures as follows: That the suit was brought upon the supposition that there was no recorded evidence of a sale of the said land by the said Gabriel De Rivas or his representatives, but soon after the suit was instituted, on a thorough search of the Spanish archives, the office at Pensacola, the above referred to proceedings were found"), which answer in full is hereto annexed and marked as Exhibit "49", and made a part of this bill.

6th. That said protocol is not a public document, as no certificate of the keeper of the Spanish archives is attached thereto either of the filing thereof in his office, or the authenticity of said documents, and the same is inadmissible in evidence, and do not prove themselves.

7th. That even if said papers are admissible and proven, that under the laws of Spain the officer selling said property as set forth therein:

A. Was without said power to make said sale.

B. The condition precedent in the sale of minors property were not observed.

C. That the ancestress of your claimants, Paula Rivas did not sign said act.

D. That the property therein was adjudicated to a minor without capacity to purchase and said sale was and is a nullity.

To which offer counsel for plaintiff also object, on the following grounds:

1st. That the best evidence that the nature of the case is susceptible of, must be produced.

That said translation, being only copies and the original thereof in the Spanish language, that the registry of said original duly certified by the Spanish authorities, must be submitted or its absence accounted for, before said translation, secondary evidence thereof, can be offered or admitted.

302 "nd. [2nd] That said purported transfer of Gregorio Caro to Fitzsimmons, Smythe and Chebeaux, never having been recorded or made of record in the Spanish archives, that no purported translation thereof can take the place of said missing documents or supply said defendants with a title. Said translation being only auxiliary to the proper title under the Spanish Regime.

The foregoing grounds of objections are made to and apply to all and consecutively, to the offers heretofore made consecutively by the defendants. Which documents offered is herein included, and made a part of this bill of exception.

Whereupon the said Judge overruled plaintiffs objection in words and figures as follows, to-wit:

"Then the only motion before the Court is the question of the admissibility at this point of certain papers offered by the defense; that is the only question.

There is no question before us as to whether we shall take our property or anybody's property without due process of law, that has nothing to do with it; cuts no figure whatever in it. I apprehend that these papers or many of them would be admissible in this case for one purpose, if for no other, and that one is for the purpose of contradicting of the witness who testified that his father, Mr. Caro, has always claimed this property.

I say I apprehend that the papers would go in if for no other reason which the Court has decided after the very learned discussion of the counsel for hours over them, which has been very instructive to the Court.

The court is satisfied that from their appearance upon their face that they are ancient documents, that their legality, that

the officer from whom they come, the keeper of the Spanish archives, entitled them to be admitted as evidence in this case, further than that the force and validity given them by the Spanish officers who passed upon them at the time, under the foreign government entitled them to be admitted in evidence in this case after nearly a century and vested rights have been acquired under them, this court will not presume now that they are of such a character that they are irregular and illegal and they cannot be submitted to the jury at all for any purpose; they are therefore admitted." To which ruling of the court plaintiffs by their counsel did then and there except.

And this constitutes plaintiffs fourth exception.

Thereupon defendants produced as a witness, Col. A. C. BLOUNT, who testified as follows:

303 Direct: My name is A. C. Blount my age is between 85 and 86, I lived in Pensacola prior to the late war. Prior to 1860.

I know Alberta Caro very well, I was attorney for the Pensacola City Company.

My attorneyship existed after the time of the war. I came here in 1856. I was employed as its attorney and remained so until after the war.

I considered my connection with the company severed when the war commenced.

Shortly after the termination of the war, I was employed as its attorney.

I know of the connection that A. Caro had with looking after the land. Mr. Brainard was the agent of the land, and employed Caro to keep off trespassers. That included the Chebeaux tract. It included the entire tract from the Western limit to the Bayou Texar.

I did not as agent for the company instruct Mr. Caro to look after the Chebeaux. I was not agent, I was attorney.

Taxes were paid regularly by George Brainard, except in one instance, and they were paid then by myself, and they sent the funds to me.

Whereupon plaintiffs by their counsel objected then and there to the following testimony of witness, to-wit: "Taxes were paid regular by George Brainard, except in one instance and they were paid then by myself and they sent the funds to me," objected to on the grounds that the tax receipt, was the best evidence.

And the said Judge did then and there overrule plaintiffs' objection and the plaintiffs by their counsel did then and there except.

And this constitutes plaintiffs fifth exception.

The Pensacola City Company at that time claimed to be owner of that tract. I knew Joseph Caro very well, never had any conversation with him in reference to titles in Pensacola. I presume he knew I was attorney for that company, he was keeper of the Spanish archives, Felo De La Rua succeeded him.

Cross Examination.

I came to Pensacola in 56 or 57, I was not here during the war, I was in the Confederate service, I believe Mr. Le Rua was in charge of the Spanish archives during the war.

I don't know when Joseph E. Caro died; I don't know if he was dead when I came here; I don't remember him.

304 I don't know what year Mr. Le Rua took possession of the archives.

My first knowledge of these archives was shortly after I came here to Pensacola I found that most of these titles were resting upon the old Spanish concessions. They were never in my possession, they were in possession of Mr. Caro, I didn't say that I didn't remember Mr. J. Caro, he was living when I came here, I do not remember what time he died.

I have forgotten when Mr. La Rua took possession [of] these archives but since the war, not long ago, Mr. Brainard had access to them at all times; Mr. La Rua had possession of them, I understood Mr. La Rua had possession of them during the war, I think he took them away with him, I think they were taken away from Pensacola.

I don't know the depository I knew half a dozen Jordens, Judge Jorden was a partner of mine at one time, in the practice of law.

I don't know if the archives were in his possession at one time; I got back from the war shortly after the close, a month or two only, 1866.

I don't know who was in possession of the archives then; I really don't know who was in possession of them shortly after I came back, I had no connection with them and took no interest whatever.

I am familiar with the Rivas tract only so far as my connection with the Pensacola City Co. I knew it as the Chebeaux tract. There were no lines there, only a large map made by George Chase, a brother of Major Chase, and it hung in my office, and it was mapped off in blocks and lots, and all the lots were previously sold before Brainard came here and before I took charge as attorney. That map included the Schackleford tract. It included all the property belonging to the Pensacola City Co. It did not include the Belmont tract.

It had been laid off in lots and blocks at that time by George Chase, the brother of Major Chase. Lots had been sold in the tract according to the map. I don't remember but one person, William Baker who was living on that tract at that time. Baker is dead long since.

I never try to make a compromise with Mr. Caro in reference to that property. I didn't suppose had any title.

He never claimed any title during the time I was attorney for that company.

After the close of the war, I considered my connection as agent severed with the company, but I was employed as attorney, after I ceased being attorney I had some interest
305 in it.

I ceased being its attorney after its re-organization. I don't remember what year. I had an interest as a stockholder in the reorganization Company, prior to this the company was composed of northern men, after its reorganization they took several southern men, at the time I became a stockholder.

I do not own any property in that tract of land now.

I am the father of W. A. Blount, I do not know that he claims property in this tract.

Re-direct Examination.

(Shows map to witness.) Looks very much like the map of George E. Chase, that hung upon the wall in my office, the map I spoke of is a very large map four feet square. It hung up against the wall in my office.

WALTER TATE, witness for defendant, being duly sworn, testified as follows:

Witness for defendant testifies.

Direct: My name is Walter Tate. I came here in 1870., 32 years ago this summer. I bought some land in the Chebaux tract, in 1874. I went into possession of some portion of that tract of land at that time or shortly after. A man by the name of Daniels was on one block as my tenant. The land was not in my own name, it was in my wife's name and this man was claiming under someone else, Mr. Caro, I think, and I put him out. I put in possession.

I put Andrew Lennox out on lots 9 and 10 in block 37. This was my wife's property, I was acting for her in putting out these parties. I put them out and put others in. I put in one by the name of Nathaniel B ....., and afterwards permitted him to go back a second time. Adam Lennox was a tenant to me until the property went into the hands of a receiver. I mean

when you were appointed receiver 1887. I continued in possession of this property until you were appointed receiver. You took possession then. I claimed these lots under title from the Pensacola City Co. I remember a man by the name of Dr. Clark building on the tract, that property afterwards went into my possession. I put him out by legal process, and I don't recollect exactly, but I think I was put in by the sheriff. He had made some terms with Mr. Caro and had built his house, or rather started to build it, when I gave him notice as soon as I discovered it, and he first told me that he would not complete it, and afterwards under different advice he did build it, and I brought suit against him, and put him out by legal process.

That was on the Chebaux tract.

306 W. E. ANDERSON, witness for defendant being duly sworn, testified as follows:

Direct: My name is William E. Anderson. I lived in Pensacola sixty-five years. I spent a few of these years in the adjoining country. I am acquainted with what is known as the Chebaux tract. I lived on it more than 60 years ago, that was before any litigation.

I didn't know it as the Chebaux tract, but the house my father lived in was on it. I lived in it.

The house was rented by my father, it was known as the Austin house. I don't know who the agent was in charge of it. There were several houses built on the point there at the time of the sale of the land in '36. We lived in one of the houses. There was a land sale in 1836. I only spoke of the house built at that time, and my father rented one of these afterwards. There were three houses in the immediate locality of the house we lived in, and there were two or three others a little farther south about sixty years ago.

There was a wharf on the back line, and a hotel farther south on the bay.

I don't know positively whether it was on the Chebaux tract or not. My impression is that it was, I am not certain.

I can not speak from my own knowledge from whom the parties who were in possession claimed title.

I have seen the George E. Chase plan of the Chebeaux tract.

(Shows map to witness.) I think these house- were built according to that plan, from the position of the streets and my recollection of the position of the houses.

Cross Examination.

I stated that I lived here sixty-five years. I am sixty-eight years old. I was eight years old when I left that tract of land.

What I speak of is from my earliest recollection. I was not much interested in the lands at that time. I was hardly out of my A. B. C's.

Re-direct Examination.

After 1880 I lived in Santo Rosa County, and then returned to Pensacola. I have known the Chebaux tract in a general way all the time I have lived in Pensacola.

307 Cross Examination.

I am a brother-in-law of Judge Maxwell. He married my sister. I was interested in the land of the Pensacola City Co. after the litigation twenty years ago. I became a stockholder, I am not a stockholder now. The stock was taken out in the shape of lots.

There was a public sale of the lands and the stockholders took the proceeds of their lots in stock. I took mine in that way.

I am a brother in law of Judge A. E. Maxwell who decided the case of the Pensacola City Co. *vs.* A. E. Caro, *et al.* There are two Judge Maxwells, father and son. My sister has been dead many years. I do not remember whether she was living when that case was decided or not. He had children by my sister, his wife.

The Pensacola City Co. was organized about 7 or 8 years after the Civil War, and I became a stockholder about that time. I held an interest in the company up to the time of the public sale of the land, as I stated before.

Re-Direct Examination.

There was not a public sale at that time, but several years later. Some of the stockholders were anxious to realize their holdings in separate property, and a valuation was placed on the property, and the stockholders took their shares in that shape.

The sale was held on the property in New City. I don't recollect whether it was on the brow of the hill or not, but it was on the hill, I don't recollect exactly. It was held on the New City property.

W. F. LEE, witness for defendant, being duly sworn, testified as follows:

Direct: My occupation is engineering and surveying.

I live in Pensacola, I have been here since 1857. My occupation at that time was the same. I became acquainted with various tracts of land around Pensacola when I came here. I

know a tract of land called the Chebaux or Rivas tract for years since very soon after I came here. I don't know under what name the plot or plan was called.

I have always known it as the George E. Chase plan of New City.

308 Mr. Wm. Fisher shows a map or plot to witness. That is a copy of the plot, I have had a copy of it myself ever since just after I came here. Mr. Blount calls attention of the jury to the plot, which map is offered and set in words and figures as follows:

[Exhibit 24—Chase Map.]

I know some houses were built on that property before the war. I don't know if any sales were made by that plot or not.

I know of some houses built there, one of which lately burned down: the old brick house and the Pritchett house. I passed the south line of Bidell street clear through the point on the bayou, where these other houses stood, Mrs. Caro's property, or old Capt. Ahron's house according to that plan.

There are two on the point where Mr. Anderson lived, and one other besides Mr. Anderson's, and north of that old house on the hill, was a house built by Mr. O. M. Avery. Some of the bricks from Mr. Avery's house are there now. I had something to do with the platting off that piece of ground, according to the present plan, a party and myself made the survey of it. (Shows present plan and map to witness.)

That's the present plan of New City. That's the plan Mr. Harding and myself made in 1872 or '73. The purpose of making it was to correspond with the balance of the city. To me [my] recollection, I think it was about '72, I am not positive about the date.

Defendants offer map of Harding & Lee, which map is hereto attached and made a part of this bill and marked Exhibit 25.

This plat or plan was made at the instance of the Pensacola City Co. It has been the accepted plan of that portion of the City of Pensacola since that time. Generally most of the claims were made out by it, there were other plans though. The Schakleford place fronting on the bayou was built by this plan. This has been the accepted plan on the City of Pensacola or that portion of it, since 1872. So were the others, but with some exceptions, it was universally accepted.

I know of sales having been made since 1872, of lots and blocks in the Chebaux tract, by that plan, there have been a number laid out on the bayou. The Brent place: Mr. Brent owned a square or two, which I laid out for him on the bayou, and there were others laid out later. The Brent place was

called Bororacheville. I haven't heard of any conveyance from any other plan since that time.

309 I took the contract to lay off a lot of streets for the Pensacola City Co. I always called it the New City Co. It was after the war. I helped to cut it with one hand myself. It was about twenty years ago, when I laid out Bororacheville, I think.

[Exhibit 25—Harding & Lee's Map.]

There was a house standing there, when I laid the lines of the streets near it. I think Mr. Hooper lived there; I think the building still stands there.

MR. WILLIAM FISHER, witness for the defendants, being duly sworn, testified as follows:

I testified previously that I went into possession of the land in controversy [as] receiver in the case of the Pensacola City Co., *et al.*, *vs.* Joseph Wilkins, *et al.*, in 1887. I have been in possession ever since. My possession consisted of collecting rents, and the exclusive possession of all the property, not all exactly, lots two and three since 1887, Mr. Caro had.

He has not exercised any control of the property since 1887, I gave him these lots for looking after the property; I had an agreement with him, I have that agreement drawn by Mr. Sullivan, Mr. Caro's attorney, and was for the purpose of putting him out. I wanted to clear up my receivership, but seeing the destitute condition of Mr. Caro's family, I felt sorry for him and wanted to do something for him, as an act of charity; Mr. Sullivan came to see me for the purpose of preventing from putting him out; here is the agreement.

Witness reads agreement, which is in words and figures as follows:

Offered by Defendants: Exhibit 26.

STATE OF FLORIDA,
Escambia County.

Witnesseth this agreement entered into this 21st day of May, 1897, between A. V. Caro and William Fisher. The said A. V. Caro hereby agrees that the said William Fisher may move the house (except shed) the said A. V. Caro is occupying from its present location to a point near the Bay of Pensacola in lot 4, block 33, now city of Pensacola, according to the plan of Lee and Harding. The said Wm. Fisher to move the fences from the present position and place the same round the said lot 4 as far as they will extend. The said Wm. Fisher agrees

310 to get the said A. V. Caro a deed with good title for said lot for the consideration of one dollar, and the said A. V.

Caro agrees upon the execution of said deed with good title as above to execute a relinquishment for all that part of his enclosure which is upon Gregory street and also in lot 3 of said block 33.

This agreement is made by said Wm. Fisher without recognizing any claim of the said Caro to the land described therein.

Witness our hands this 21st day of May, 1897.

A. V. CARO,
WM. FISHER.

Witnesses to A. V. Caro:
M. A. QUINA.

Witness: This property has been assessed accoding to the Lee & Harding plan since I have been receiver, according to the plan Mr. Lee identified.

Whereupon counsel for defendants propounded the following question to witness:

Q. Do you know who has paid the taxes on that land since 1887?

To which question plaintiffs by their counsel did then and there object on the grounds that the tax receipts was the best evidence.

And the said Judge did then and there overrule plaintiffs' objection; to which ruling of the Court plaintiffs by their counsel did then and there except.

And this constitutes plaintiffs' 6th exception.

Witness: The owners claiming through the Pensacola City Co. paid the taxes.

(MR. BLOUNT, Counsel for Defendants:) Q. The taxes amounted to about $15,000.00 since you have been receiver?

A. Yes; probably it may be a little less; I approximate it because in 1900 the taxes were $1100 and some odd; in 1901 the taxes were a little more, assessments was a fraction more and besides the [rate] has increased, the rate in 1900 was at the rate of $3.78 per hundred; in 1901 were approximately

68 xx

$1200 or more; the rate of taxes for 1901 were at the rate of $3.78 per hundred. The taxes in 1901 were approximately $1200.00 or more. I have known the Chebaux tract since I came to Pensacola in 1877, in fact just 25 years ago this month.

I have had acquaintance with real estate transactions
311 since I came here, I know of numerous sales made in that tract since I came here, hundreds of them, in fact several hundred sales; I don't know how many it amounts to some 300. I didn't count any further; I refer to sales made by the Pen-

sacola City Co. or under their name. These sales were made by the plan of Lee and Harding, the plat before me on the table.

I know of occupation on that tract according to that plat, by persons claiming under the Pensacolas. The first enclosure was Mrs. Scarritt's place called Borocheville in 1887 that summer. Mrs. Scarritt's place was used as a pleasure resort, and I went out that summer frequently, and the citizens of Pensacola frequently went out there; Senator Jones was there at the time, and made a speech at Friscati.

Borocheville was known as Borocheville. Louis Knowles and several others had a bath house out there on Bayou Texar, and Mr. Brent had a chicken farm. A man by the name of Herwig built out there and several others. I don't recollect now. Of course there have been a good many houses built on the tract since Clark built out there, and on the hill there are other houses besides his, also further down on the same tract and some of them are large, and costly dwellings, and all built according to this map.

I don't know of anything else in this case that is competent for testimony except that I had Mr. Caro before the Court once or twice while I was receiver to force him to pay rent, and he paid the costs. I don't remember whether he paid rent or not, he never disputed my authority as receiver. I felt sorry for his circumstances, and I didn't want to be hard on him. All of the occupants there recognized my authority, of course subsequently I had to take a little harsher methods, I felt sorry for them as they were very poor people.

The plaintiffs were very poor people.

Cross Examination.

I was appointed receiver in 1887, fifteen years ago next month.

There had to be a law suit pending at the time or I could not be appointed receiver. I was appointed receiver for the parties who were litigating. Judge McLellan was the Judge in the case.

The first decree was rendered in 1889, Jan. 22nd. Since that time I have recognized the complainants in the matter. I never have been dismissed, no formal dismissal.

I am not holding for the benefit of the Pensacola City
312 Co. They have no lots out there now, they deeded their interests to other parties. I don't think they owned any at the time the suit was brought. In 1887 at the time the suit was brought they did not own any. They were the complainnants in the suit. I never heard they claimed a portion of that property, I don't know of any particular lots they claimed.

I was not the attorney, I don't know if they were made parties to the suit, there were forty or more complainants besides the Pensacola City Co. A good deal of the property turned over to me as receiver has been disposed of. I didn't make any objection to the sales; the complainants obtained an order from the Judge of the Circuit Court, Judge Barnes was presiding at the time, to make sale of that property, after I was appointed receiver. I did not give bond.

I attorned for the rent to the Judge of the Circuit Court, after the time of final decree, and after that time to the Pensacola City Co.

I turned the proceeds over to the Judge of the Circuit Court, I was the receiver.

After the final decree I settled with complainants, and I got their discharge. I didn't settle with the defendants, the defendants didn't have anything.

Re-Direct Examination.

The final decree of the Court vested the title in the complainants, if the defendants have any decree against me moral or legal, I am willing to settle with them.

The Court's final decree decreed that the money be paid to the complainants.

Defendants by their counsel offer the following conveyances, consecutively, which are set out in words and figures as follows:

Offered by Defendants: Exhibit "27."

Partion between John Chabeaux and Lawrence Millaudon.

In the City of Pensacola on the first day of October, one thousand eight hundred and eighteen, before me William King, Colonel 4th Regiment United States Infantry, Civil and Military Governor of the City aforesaid in the Province of West Florida, Cirilo de Morant and John Chabansc, and the first declared: that in virtue of the power vested in him by Lawrence Millaudon, mercant of the City of New Orleans, and Lewis Donquemenil de Morant requesting for the first, both of one
313 part and the said John Chebansc of the other part, according to an agreement concluded between the parties and executed before Marcos Lafitte, a notary public in the City of New Orleans, bearing date twenty-first day of May last, and in consequence of the conditions stipulated therein, hath granted and by these presents doth grant the various lots purchased by the said John Chabausc in the town of Pensacola, from the twenty-fifth day of September last year till the first day of August instant, as well as in the same as in behalf of

the gentlemen aforesaid, and in tenth for third account of the three above mentioned persons, which purchases he, the said Cirilo de Morant, regulated in manner following, that is to say: Lots number 29, 37, 102 and 149 fronting the Bay of Pensacola were valued at one thousand dollars each; lots number 35, 100, 101, 144, 145, 146, 147, 148 and No. 78 at six hundred dollars each, and lot number 243 at two hundred dollars, making in the whole a total amount of nine thousand and six hundred dollars, of which one-third, part of which is three thousand and two hundred dollars, belongs to the said John Chabausc, and the other two-thirds which are six thousand and four hundred dollars to the aforesaid Lawrence Millaudon and Lewis Donquemenil de Morant, Junior, represented by Millaudon. And in order to grant and give to the said John Chabausc the free use of his third part of the lots above described, it is absolutely that a just and equal division of the premises should be made. Therefore, it is covenanted and agreed by the said Cirilo de Morant that a partition of the same shall be and is hereby made and determined in manner following: That lots number 37, 100, 101 and 144 and the two-thirds of lot No. 78 be and the same are hereby recognized and declared as the property of said John Chabausc, in order that he may hold, enjoy, possess, sell and dispose of the same at will as his own, also lots number 29, 35, 102, 145, 146, 147, 148, 149, 243 and one-third part of lot No. 78, are by these presents recognized and confessed to be the property of the above mentioned Lawrence Millaudon, and Lewis Donquemenil de Morant, Junior, in order that they may hold, possess and enjoy and dispose of the said premises at their will, it being well understood, that in regard to lot No. 78, in as much as the said John Chabause is holder of the greater jart of it, he will have the right only to sell or dispose of the same under the express condition to be accountable of the third part of its value to the aforseaid Millaudon and Donquemenil de Morant. In virtue of the deed, the said Cerilo de Moran in behalf of his attorn*ies* and the said John Chabaux, have by these presents declared and acknowledged,
314 that they renounced and assign in due form of law the right *the right* and interest which each other first had and held over six lots which by this instrument of writing they have transferred and released respectively to any of the parties to these presents; declaring also that the purchase made by John Chabaux of the third part of the lands of Widow Rivas situated on the east side of the town of Pensacola shall only remain in partnership by equal shares, between John Chabaux Lewis Donquemenil de Morant, Junior, and Lawrence Millaudon, as it is impossible at this present time to proceed to its

partition owing to the absence of James Fitzsimmons and Samuel M. Smith, and to the time and faithful performance of the several articles and agreements above mentioned, the said Cirilo de Morant and John Chabaux do hereby respectfully bind themselves with their property present and to have, renouncing the laws in their favor and defense, with those in general permitting them to do otherwise; with power *with power* to the Justicies in order to compel them to the fulfilment of the same, as a sentence agreed and passed by a judgment without appeal, having hereunto set their hands and seals with me and the secretary ad-interin of the Province of West Florida.

(Signed) CIRILO de MORANT,
JOHN CHABAUX,
WM. KING,
ML. McKINSEY.

STATE OF FLORIDA,
Escambia County.

I certify that the foregoing is a true and correct copy of the deed of partition between the parties therein as the same remains of record in my office in Public Archives book of deeds "B," at pages 229 and 230.

Witness my hand and private seal, my official seal being lost or misplaced, this 16th day of May, A. D. 1885.

(Signed) A. E. de la RUA, [L. S.]
Keeper of Public Archives, West Florida.

Offered by Defendants: "Exhibit 28."

Juan Brosnahan to Walter Gregory.

Know all men by these presents, that we, Juan Brosnaham and Isabella Brosnaham, his wife, and Henry Mitchelet and Dionisia Mitchelt, his wife, all of the City of Pensacola, County of Escambia, and Territory of Florida, for and in consideration of the sum of twelve hundred dollars, to us in hand paid
315 by Walter Gregory, of the city, county and territory aforesaid, the receipt whereof is hereby confessed and acknowledged, have and by these presents do bargain, sell, alien, convey and confirm, and deliver to the said Walter Gregory, his heirs and assigns, all our estate, right, title, interest, claim and demand of, in and to a certain piece or parcel of land, lying, situate and being in the county aforesaid, being five undivided eighteenth parts of three hundred arpens lying on the Bay of Pensacola and Bayou Texar, being the land formerly owned by John Chebeaux, and sold under execution by the

Marshal of the district of West Florida on the sixth day of January, in the year one thousand eight hundred and thirty-four, at which sale we, the said Juan Brosnaham and Henry Mitchelt, became the purchasers, together with all improvements, privileges, hereditaments and appurtenances thereon or thereto belonging or in anywise appertaining. To have and to hold the before mentioned premises together with the appurtenances to the said Walter Gregory, his heirs and assigns forever, and we, the said Juan Brosnaham and Henry Mitchelet, for ourselves, our heirs, executors and administrators, do covenant, promise and agree to and with the said Walter Gregory, his heirs, executors, and administrators and assigns that we will warrant and defend the before mentioned premises, against the claim or claims of all manner of persons claiming, by, through or under us, or either of us, forever, firmly by these presents.

In witness whereof, we, the said Juan Brosnaham and Isabelle Brosnaham, his wife, and Henry Mitchelet and Dionisia, his wife, have hereunto set our hands and seals at Pensacola, the sixth day of November, in the year one thousand eight hundred and thirty-four.

[SEAL] JUAN GROSNAHAM,
[SEAL] ISABELLE BROSNAHAM,
[SEAL] HENRY MITCHELET,
her
[SEAL] DIONISIA x MITCHELET.
mark

Signed, sealed and delivered in presence of:
THOS. M. BLOUNT,
HENRY CASTILLIA.

TERRITORY OF FLORIDA,
Escambia County.

Personally appeared before me, the undersigned, a justice of the peace, Juan Brosnham and Isabelle, his wife, and Henry Mitchelet and Dionisia, his wife, and acknowledged that they had executed the foregoing instrument of writing for the
316 uses and purposes therein mentioned. And the said Isabelle and Dionisia having been by me separately and apart from their said husbands, examined, and the contents thereof having been fully made known to them, declared that they had executed the same of their own free will and accord, and without the fear, compulsion or conversion of their said husbands.

Given under my hand at Pensacola, the sixth day of November, in the year one thousand eight hundred and thirty-four.

THOMAS M. BLOUNT,
J. P. E. County.

STATE OF FLORIDA,
Escambia County.

The foregoing is a true and correct copy of a deed, remaining of record in my office in book "C," at pages 198, and of date of record Oct. 25th, 1835.
August 17th, 1887.

F. E. de la RUA,
Clerk County Court, Escambia County, Florida.

Offered by Defendants: Exhibit "29."

LORENTE MILLAUDON
to
W. H. CHASE.

Know all men by these presents, that we, Lorente Millaudon and his wife, of the City of New Orleans, for and in consideration of the sum of thirty-one thousand and eight hundred dollars, current money of the United States to me in hand paid, by William H. Chase, of the City of Pensacola, in the Territory of Florida, the receipt whereof I do hereby confess and acknowledge, have granted, bargained, sold, and by these presents do grant, bargain, sell and convey unto the said William H. Chase, his heirs and assigns forever, all my right, title and interest, claim and demand of, in and to a certain parcel or piece of land lying, situate and being on the Bay of Pensacola, and within the corporate limits of the City of Pensacola, known as the "Rivas Tract," which interest consists of four undivided eighteenth parts, more or less, with all the appurtenances, and all the right, title, claim and demand of us or either of us in the premises.

To have and to hold the same with all the appurtenances with the said William H. Chase, his heirs and assigns in fee simple forever, and I, the said Lorente Millaudon, do hereby covenant and agree to and with the said William H. Chase, his heirs and assigns forever, executors and administrators, that I will
317 warrant and defend the said premises with the appurtenances unto the said William H. Chase, his heirs and assigns forever.

In testimony whereof the said Lorente Millaudon and his

wife have hereunto set their hands and seals at New Orleans, the twenty-third day of January, in the year one thousand eight hundred and thirty-seven.

[SEAL] L. MILLAUDON,
[SEAL] ELMIRA MILLAUDON.
nee MORTROMUST.

Signed, sealed and delivered in presence of:
LONIS SCHMITDZ,
VICTOR BARTHAY.

STATE OF LOUISIANA,
City of New Orleans, ss:

Personally appeared before me, the undersigned commissioner, Lorente Millaudon, and Madam Elmira Millaudon, his wife, and acknowledged that they had executed the foregoing instrument of writing for the uses and purposes therein mentioned. The said Elmira Millaudon having been by me separate and apart from her said husband, examined touching the execution and the contests thereof having been by me fully made known to her. She declared that she had executed the same of her own free will and accord, and without the fear or compulsion or constraint of her said husband.

Given under my hand at New Orleans, the twenty-third day of January in the year one thousand eight hundred and thirty-seven.

ISAAC S. PRESTON.

Commissioner under the act, entitled an act to authorize the appointment of a commissioner to take the acknowledgements of deeds and instruments under sealed, passed Jan. 24th, 1831, approved Jan. 28th, 1831, in and for the State of Louisiana.

STATE OF FLORIDA,
Escambia County.

The foregoing is a true and correct copy of a deed remaining of record in my office in book "D" of deeds at pages 242, and of date of record Feb'y 14th, 1837.

August 17th, 1887.

F. E. de la RUA,
Clerk of the Court, Escambia County, Florida.

318 *Offered by Defendant: "Exhibit 30."*

JAS. W. EXUM
to
WALTER GREGORY.

Know all men by these presents, that whereas Lawrence Millauon at the term of November, one thousand eight hundred and thirty-four, of the Hon. the Supreme Court of the Western District of Florida, Escambia County, obtained a decree in chancery requiring the unknown heirs of Louis Donquemenil de Morant, on or before the twentieth day of the then present month of November, to pay into the hands of the clerk of the Superior Court, the sum of fifteen thousand six hundred and three dollars and ninety-four cts., and whereas on the 25th day of November, the said heirs of the said Louis Donquemenil de Morant being in default, the said Larence Millaudon served out his execution for the sum of fifteen thousand six hundred and eight dollars eighty-one cts., on the decree aforesaid, by virtue of which execution to me directed, I, James W. Exum, Marshal of the Western District of Florida, levied upon and attached three undivided eighteenth parts of a tract of land of three hundred arpens called the Rivas land, lying and being in said Escambia County, near the Bayou Texar, and authorized the same to be sold at public auction according to law, and on the 7th day of February, 1835, being the day of sale, Walter Gregory bid off the same for the sum of three thousand three hundred and seventy-six dollars, he being the highest and best bidder. Now, I, James W. Exum, marshal as aforesaid in virtue of the premises and for and in consideration of the sum of three thousand three hundred and seventy-six dollars to me in hand paid by Walter Gregory, the receipt whereof, I hereby acknowledge, have bargained, sold and delivered and by their presence do bargain, sell and deliver to the said Walter Gregory, his heirs, executors and administrators and assigns, all the right, title and interest of the said unknown heirs of Louis Donquemenil de Morant in the three undivided eighteenth parts of the tract of land of three hundred arpens, hereinbefore mentioned and described, together with the hereditaments and appurtenances thereunto belonging or in anywise appertaining, to have and to hold the said three undivided eighteenth parts of the tract of land of three hundred arpens heretofore mentioned, together with the hereditaments and appurtenances unto the said Walter Gregory, his heirs, executors, adminis-

trators and assigns forever. In testimony whereof, I
319 have hereunto set my hand and seal in the City of Pensacola, this ninth day of February in the year of our Lord one thousand eight hundred and thirty-five.

[SEAL] JAMES W. EXUM, *Marshal,*
By JOSEPH SIERRA, *Dist. Marshal.*

Signed in presence of:
H. HYER, and
CHARLES Le BARON.

TERRITORY OF FLORIDA,
Escambia County.

This day James W. Exum, Marshal of the Western District of Florida, by his deputy, Joseph Sierra, appeared before me, M. Crupper, Clerk of the Court of the county aforesaid, and acknowledged the foregoing instrument of writing to be his act and deed for the purpose therein mentioned.

Given under my hand at Pensacola this 28th day of Oct., in the year of our Lord, one thousand eight hundred and thirty-five.

M. CRUPPER, *Clerk.*

Offered by Defendants: Exhibit 31.

JAS. W. EXUM
to
BROSNEHAM and HENRY MITCHELLET.

Know all men by these presents that whereas Lawrence Millaudon of the term of November, one thousand eight hundred and thirty-three, of the Honorable the Superior Court of the Western District of Florida, obtained judgment against John Chebbaux, deceased, for the sum of twelve hundred and forty-three dollars and sixty cents and interest thereon at six per cent from the 15th day of November, 1833, until paid, together with the sum of four dollars and thirty-seven cents for his costs in his suits expended on the 26th of November, 1833, sued out his execution for the sum of twelve hundred and forty-seven dollars and ninety-seven cents, being for the judgment aforesaid in virtue of which execution to me directed, I, James W. Exum, Marshal of the Western District of Florida, levied upon and attached amongst other property of the said John Chabbaud five undivided eighteenth parts of a tract of land of three hundred arpents fronting the Bay of Pensacola and Bayou Texar about one mile from the City of Pensacola and advertised

the same for sale at public vendue according to law on
320 the 6th day of January, 1834, being the day of sale, John Brosnham and Henry Mitchalet being the highest and best bidder for the sum of eighty dollars.

Now I, James W. Exum, Marshal as aforesaid, in virtue of the premises and for and in consideration of the sum of eighty dollars to me in hand paid by the said John Brosnaham and Henry Mitchalet, the receipt whereof I hereby acknowledge, have bargained, sold and delivered, and by these presents do bargain and sell and deliver unto the said John Brosnaham and Henry Mitchalet, their heirs, executors, administrators and assigns all the right, title and interest of the said John Chabbaux, deceased, in and to the above five undivided eighteenth part of three hundred arpens of land heretofore mentioned and described, together with the hereditaments and appurtenances thereunto belonging or in anywise appertaining. To have and to hold the said eighteenth part undivided of the said tract of land of three hundred arpens of land unto the said John Brosnaham and Henry Michalet, their heirs, executors, administrators and assigns forever.

In testimony whereof I have hereunto set my hand and seal this 6th day of January in the year of our Lord one thousand eight hundred and thirty-four.

(Signed) JAMES W. EXUM, *Marshal,* [L. S.]
By JOSEPH SIERRA, *Dept. Mar.*

Signed, sealed and delivered in presence of:
(Signed) JOHN CAMPBELL,
(Signed) WM. A. Bell.

"Five" interlined valid."
"JOSEPH SIERRA, *Dept. Mar.*

TERRITORY OF FLORIDA,
Escambia County.

This day James W. Exum, Marshal, by his deputy, Joseph Siera, personally appeared before me, Geo. F. Baltrell, clerk as aforesaid, and acknowledged the foregoing instrument of writing to be his act and deed for the purposes therein mentioned.

Given under my hand this 7th day of January, one thousand eight hundred and thirty-four.

(Signed) GEO. F. BALTRELL, *Clk.,*
M. CRUPPER, *Deputy.*

STATE OF FLORIDA,
Escambia County.

I, A. M. McMillan, Clerk Circuit Court in and for said state and county, de hereby certify that the foregoing is a true
321 and correct copy of the original as remains of record in deed book No. B on page 527 of the public records of said county in my office.

In testimony whereof, I have hereunto set my hand and official seal this 5th day of November, A. D. 1901.

(Signed) A. M. McMILLAN,
Clerk Circuit Court.
By B. H. BURTON, *D. C.*

Offered by Defendants: Exhibit 31.

W. H. Chase, First Part, Wm. H. Chase, Second Part, and Walter Gregory, Third Part.

This indenture made and entered into this thirteenth day of January in the year of our Lord one thousand eight hundred and thirty-seven, between William H. Chase, Walker Gregory, John A. Cameron, Thomas M. Blount, Charles Augustus Davis, Morris Robinson, Sampson V. S. Wilder, Thomas Biddle, Elihu Chauncey, Samuel Jaudon, William A. Booth, The Pensacola Association, James H. Severich, Jackson Morton, James D. Graham, Henry Hyer and Charles Le Baron of the first part, William H. Chase of the second part, the said Walker Gregory of the third part, and the said William H. Chase, Morris Robinson and Charles Augustus Davis of the fourth part:

Whereas, in and by certain articles of agreement bearing date the eighth day of December, eighteen hundred and thirty-five, after reciting that a company had been formed for the purpose of purchasing lots and lands, in and near Pensacola, in West Florida, known as the "Pensacola Land Company," the property of which was then divided into nine shares or parts, whereof William H. Chase was the owner of one-ninth, Thomas M. Blount of one-ninth, William L. Booth of one-ninth, Walker Gregory of one-ninth, John A. Cameron of one-ninth, Joseph M. White of one ninth, Charles A. Davis of one-half share or eighteenth part, Thomas Biddle of one-half share or eighteenth part, Sampson V. S. Wilder of one-half share or eighteenth part, Morris Robinson of half share or eighteenth part, Elihu Chauncey of one-half share or eighteenth part, and Samuel Jaudon of one-half share of eighteenth part, and further reciting that whereas the conveyances and deeds for all the lands purchased by the said company had been taken in the name of the

said Walter Gregory who had held the said lots and lands in trust for the members of the said company proportionately to their respective interests in said purchases, and reciting
322 further that whereas the said William H. Chase had contracted to purchase certain lots and lands lying in and being near the City of Pensacola for the use of said company, of and from the one Samuel M. Smythe, the conveyance thereof had not yet been executed, and reciting further that whereas the said Walker Gregory had by certain indenture bearing even date with the articles of agreement conveyed to the said William H. Chase, all his estate, right and title in and *to* the lots and lands, to be holden by the said William H. Chase in trust for the said company.

It was by the said articles of agreement witnessed that the said Walter Gregory, John A. Cameron, Thomas M. Blount, William L. Booth, Joseph M. White, Charles A. Davis, Morris Robinson, Sampson V. S. Wilder, Thomas Biddle, Elihu Chauncey and Samuel Jaudon, of the first part, and the said William H. Chase of the second part, that the said parties of the first and second part, would severally and each for himself pay or cause to be paid their and each of their respective shares or proportions of the costs and expenses attendant upon the purchase of the said company's lots and lands as the same settled in a schedule thereto appended, and also that they thereby ratified and confirmed the deed of conveyance executed as aforesaid, by the said Walter Gregory to the said William H. Chase and it was covenanted [and] agreed by and between the parties to the said articles of agreement, that the said William H. Chase, the party thereto of the second part, should and would hold all the lots and lands then owned or thereafter to be purchased by the said company in trust and for the use of said company, to be managed by him in their behalf with his best skill and judgment, and that he would from time to time, and as often as thereto requested submit to the said company a statement of his proceedings as their agent or trustee, and that the said William H. Chase might sell and dispose of at public or private sale such parts and portions of said lots and lands, as in his judgment might be deemed expedient, and the said William H. Chase, the party to the said articles of agreement of the second part, did covenant and agree that he would stand served and possessed of the said lots and lands so conveyed by the said Walter Gregory as aforesaid, and of the said lots and lands so contracted to be purchased from the said Samuel M. Smyth, and would hold the same in trust and for the use of the said Pensacola Land Company, and of each member thereof in proportion to his share and interest therein, that he would manage the same

to the best of his skill and judgment, that he would sell and dispose of either at public or private sale so much and such parts of said lots and lands, as in his judgment the in-
323 terest of the said company might require, that he would make all necessary conveyances for such lots or portions that he might sell and take all needful steps for securing payment for same, and that he would apportion and pay over to each member of the said company his share of the proceeds of such sales according to the interest of each member in said concern, and further that he would furnish them from time to time, and as often as requested, a statement of the proceedings as their agent and trustee, and further that whenever one-third or one-half of said lots and lands (at the discretion of said trustee) should be sold and disposed of for the joint interest of all concerned, he, the said William H. Chase, would convey the remaining lots and lands belonging to said company to the several members thereof in proportion to their respective interests therein according to such sale or plan of division and location as might be settled upon by the members of said company, or in default of the settlement of such scale or plan that the said William H. Chase to divide the remaining lots and lands among the several members of said company, according to the several shares as might be consistent with right, and justice, as by the said articles of agreement, reference being thereunto had will appear more fully.

And whereas all the lands contracted to be purchased from the said Samuel Smyth have been since conveyed to the said William H. Chase, and all the lands of the said company, have, since the execution of said articles of agreement, been fully paid for, by the parties of the first to the said articles of agreement, with the exception of those hereinafter mentioned.

And whereas since the execution of the said articles of agreement the shares or interests of money of the individuals (excepting Joseph M. White and William L. Booth, who have sold and disposed of their respective interest), now hold the shares or portions of land placed opposite to their respective names in the schedule hereunto annexed marked "A," which schedule is hereby declared to be part of this indenture, and the several other persons, parties hereto of the first part, have since become interested in the said lands and hold the shares or portions thereof placed opposite to their respective names, in the said annexed schedule marked "A."

And whereas, since the execution of the said articles of agreement it has been discovered that Samuel Millaudon of New Orleans owned four eighteenth undivided parts more or less of the

tracts of land conveyed by the said Walter Gregory, to the said William H. Chase in trust for the Pensacola Land Company, aforesaid as the "Rivas tract," and whereas the said
324 William H. Chase as trustee of the said Pensacola Land Company has purchased the interest of the said Millaudon for the sum of thirty-one thousand eight hundred dollars and has drawn his bills of exchange on the original shareholders in the said land company, in proportion to their respective interests, payable on the first day of April next for the said sum of thirty-one thousand eight hundred dollars, that is to say, the said William H. Chase paid his proportion of said purchase, he has drawn his bill of exchange on Walter Gregory for the sum of thirty-five hundred and thirty-three dollars thirty-three and 1-3 cents on William L. Booth for the sum of thirty-five hundred and thirty-three dollars and thirty-three and 1-3 cents, on John A. Cameron for the sum of thirty-five hundred and thirty-three dollars and thirty-three and 1-3 cents, on Thomas M. Blount for the sum of thirty-five hundred and thirty-three dollars and thirty-three and 1-3 cents, on Samuel V. S. Wilder for the sum of thirty-five hundred and thirty-three dollars and thirty-three and 1-3 cents, the said Wilder being the owner of one-half the interest of the said Joseph M. White in addition to his eighteenth part, on Morris Robinson for the sum of seventeen hundred and sixty-six dollars and sixty-six and 2-3 cents, on Thomas Biddle for the sum of seventeen hundred and sixty-six dollars and sixty-six and 2-3 cents, on Charles Augustus Davis for the sum of seventeen hundred and sixty-six dollars and sixty-six and 2-3 cents, on Elihu Chauncey for the sum of seventeen hundred and sixty-six dollars and sixty-six and 2-3 cents, on Samuel Jaudon for the sum of seventeen hundred and sixty-six dollars and sixty-six and 2-3 cents, and on the Pensacola Association for the sum of seventeen hundred and sixty-six dollars and sixty-six and 2-3 cents, the said Pensacola Association being the owners and representing the undivided interest of Joseph M. White.

And whereas, the name of the said company hath since been changed from that of the Pensacola Land Company to that of the Pensacola City Company.

And whereas, the said parties to these presents of the first part by certain articles of association bearing even date herewith have formed themselves into a joint stock company and have thereby prescribed rules and regulations for the management and government thereof as therein stated and set forth through the medium of trustees and for that purpose are desirous that the said William H. Chase, Morris Robinson and Charles Augustus Davis should be constituted the trustees of

the said company in the place of the said William H. Chase with a full power to them and a majority of them and the
325 survivor of them or to their successors in office to any act, matter or thing, that the said William H. Chase might or could do under and by virtue of the above in part recited articles of agreement, and in accordance with the said articles of association.

And whereas, to vest the said trust estate in the said William H. Chase, Morris Robinson and Charles Augustus Davis as join tenants it is deemed proper and necessary to cause the same to be conveyed by the said William H. Chase to a third person who can thereupon execute a conveyance of the said estate to the said William H. Chase, Morris Robinson and Charles Augustus Davis as joint tenants in trust as aforesaid.

And whereas, Walter Gregory has been selected as such third person:

Now, therefore, this indenture witnesseth, that the said William H. Chase, party to these presents of the second part, with the assent and at the special instance and request of the said parties of the first part, testified by their execution of these presents, and in consideration of the premises, and of the sum of one dollar to him in hand paid by the said Walter Gregory, party to these presents of the third part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, released, conveyed and confirmed and by these presents doth grant, bargain, sell, release, convey and confirm unto the said party of the third part, his heirs and assigns, all and singular the said lots of land and lands and premises, hereinbefore mentioned, and as the same are more particularly mentioned and described in and upon the map, hereunto annexed as three separate parcels of land, comprised within yellow lines, on each of which parcel is written "Pensacola Land Company," and which said map forms part of this present indenture, and is to be recorded therewith, saving and reserving thereout the several lots mentioned in schedule marked "B" hereto annexed, which schedule has been signed by the said William H. Chase, and forms part of this indenture, and is to be recorded therewith—and also saving and reserving a certain square known and distinguished in the plan of the New City of Pensacola, by the number of figure (4), which square of ground has been conveyed by the said William H. Chase as trustee of the Pensacola Land Company to George E. Chase upon certain considerations and conditions at the special instance and request of the parties of the first part, testified by their execution of these presents.

The said lots mentioned and described in the schedule marked "B," having been sold and conveyed by the said William
326 H. Chase in his capacity as trustee under the before mentioned articles of agreement made and entered into on the eighth day of December in the year one thousand eight hundred and thirty-five, together with all and singular the rights, members, privileges, hereditaments and appurtenances thereunto belonging.

To have and to hold singular the said lands and premises to the only proper use of the said party of the third part, his heirs and assigns forever.

In trust nevertheless, and to the intents and purpose that the said party of the third part shall do and forthwith convey and appear all and sigular the said lands and premises to the said parties of the fourth part as joint parties upon the trusts hereinafter mentioned, and hereinafter more particularly expected and declared.

And this indenture further witnesseth, that the said party of the third part in performance of the trust in him reposed and in consideration of one dollar to him in hand paid by the said William H. Chase, Morris Robinson and Charles Augustus Davis, parties to these presents of the fourth part, at and before the unsealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, released, conveyed and confirmed by these presents doth grant, bargain, sell, release, convey and confirm unto to the said parties to these presents of the fourth part, their heirs and assigns, all and sigular the said lots of lands, land and premises hereinbefore mentioned, and as the same are delineated and described upon the said annexed map, saving and reserving the square before mentioned conveyed to George E. Chase, and the lots of land mentioned in the schedule "B," which lots have been sold and conveyed by the said William H. Chase in his capacity as trustee under the articles and agreement made and entered into on the eighth day of December in the year one thousand eight hundred and thirty-five before recited, together with all and singular the rights, members, privileges, hereditaments and appurtenances to the same belonging and appertaining.

To have and to hold all and sigular the said lands and premises and every part and parcel thereof to the only proper use of the said parties of the fourth part, their heirs and assigns forever, as joint tenants and not as tenants in common.

In trust nevertheless, and to the intent and purpose that the said parties of the fourth part shall stand served of the same to the uses of the said parties of these presents of the first part,

their heirs and assigns, according to their respective in-
327 terests, the same as specified and expressed in the said schedule hereunto annexed marked "A."

And upon the further trust, that they, the trustees or a majority of them or the survivors or survivor of them shall have power from time to time to sell and convey all or any of the said lands and premises at private sale or at auction for cash or upon credit and to execute conveyance to the purchaser or purchasers thereof and to make division and distribution of the proceeds thereof among the persons beneficially interested therein at the time of each division and distribution, in conformity with and according to the rules and regulations prescribed in and by the said articles of association and the said parties of the fourth part do hereby covenant, promise and agree to and with all the other parties of the first part and every one of them, that they, the said parties of the fourth part, shall and will observe, fulfil and execute and perform all and singular the regulations, duties, powers and services required by them, and prescribed by the said articles of the association, and by these presents according to the true interest and meaning thereof, but they are not to be responsible for the acts of each other, nor for the acts of any other person, nor for any losses or misfortunes, excepting such as may arise from their own wilful misconduct or gross neglect, and it is hereby expressed and declared that the reference herein made to the said articles of association is not to be construed, deemed or taken to impose any restriction upon the powers of the said trustees, in regard to the sale and conveyance of the land and premises, so vested in them as aforesaid or so as to render it necessary for any purchaser to look to the application of the purchase money or into the provisions of the said articles of the association for the protection of his title, the same being intended to govern the parties thereto in their relations with each other.

In witness whereof, the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

W. H. CHASE.
WALTER GREGORY.
J. A. CAMERON.
THOMAS A. BLOUNT.
CHARLES A. DAVIS.
M. ROBINSON.
V. S. WILDER.
THOMAS BIDDLE.
ELIHU CHAUNCEY.
S. JAUDON.

328 WILLIAM A. BOOTH.
THOMAS BIDDLE, *Financial Agents*
E. CHAUNCEY, *of the Pensacola*
S. JAUDON, *Association.*
JAMES H. LIVINNIH.
JACKSON MORTON.
J. D. GRAHAM.
HENRY HYER.
CHAS. Le BARON.

The word sale in the nineteenth line of the 2nd page being interlined before signing.

By Gregory, Cameron, Blount, Graham, Hyer and Le Baron, in our presence, also by Morton. E. J. Etheridge.

Sealed and delivered in presence of:

Mr. Crupper. By Chas. Levich. By Chas. Levich. By Davis, Robinson, Wilder and Booth. Robinson.

Witnesses to the signatures of Thomas Biddle, Elihu Chauncey, J. S. Jaudon, and also the same parties as financial agents:

JOSEPH COWEPUTHNANT.
A. G. JAUDON.

STATE OF LOUISIANA,
City of New Orleans.

Be it known that this first day of April, 1837, at the City of New Orleans, personally appeared before the undersigned commissioners duly appointed under the law of the territory of Florida to receive acknowledgment of deeds and other instruments of writing in and for the State of Louisiana, Captain William H. Chase and John H. Leverich to me well known, and signed and acknowledged in the presence of witnesses, P. A. Delauchauaise and R. H. South, the within instrument of writing as their act and deed for the purpose herein stated, in faith whereof, I have hereunto signed my name and affixed my seal the day and year aforesaid.

NAAC. T. PRESTON COWEPUTHNANT.

STATE OF PENNSYLVANIA,
City of Philadelphia.

Be it remembered that I, John Swift, esquire, Mayor of the City of Philadelphia, and authorized by law to take the acknowledgment of deeds, letters of attorneys, mortgages or other writings under seal, with full power and authority to administer oaths and affirmations and to take depositions, etc., do here-

by certify that on this twentieth day of May, 1837, A. D.,
329 personally came before me A. G. Jaudon of the said City and personally known to me, who being duly sworn according to law, did depose and say that he was present and saw Thomas Bibble and Elihu Chauncey and S. Jaudon three of the grantors and parties to the annexed deed sign, and had heard them severally acknowledged that they had signed, sealed, delivered and executed the same as their free act and deed for the uses and purposes therein mentioned and that he subscribed his name as a witness thereto, and that he saw Joseph Coweputhnant sign his name at the same time as a witness also to the said signing, sealing and delivery—and the deponent further says that on the day and year aforesaid the said Thomas Biddle, E. Chauncey and S. Jaudon, the financial agents of the Pensacola Association, sign, seal, and deliver and execute the said annexed deed for and in behalf of the said association, for the uses and purposes therein mentioned, and that he subscribed his name as a witness thereto, and that he saw the said Joseph Coweputhnant subscribe his name the same time as a witness to the said signing, sealing and delivering.

Given under my hand and the corporate seal of the said City of Philadelphia of the day and year aforesaid.

JOHN SWIFT, *Mayor.*

STATE OF NEW YORK,
City and County of New York. ss.

By this public instrument be it known to all, whom it may concern, that I, William H. Maxwell, commissioner, in and for the State of New York, duly commissioned by the Governor of the Territory of Florida (by virtue of an act of the legislature of the said territory), an act to authorize the appointment of commissioners, etc., passed January 24th, 1831, and therein and thereby authorized and empowered to take the acknowledgement of any deed, contract, letter of attorney, mortgage or conveyance of any lands, tenements or hereditaments, lying or being in the Territory of Florida, or any other writing under seal, to be used in said territory, with full power and authority to administer oaths and affirmation, take depositions, etc., do hereby certify that on the 23rd day of May, 1837, before me said commissioner, personally came Joseph Coweputhnant proven by the oath of Charles A. Davis, to be a subscribing witness to the annexed deed, who being by me duly sworn, did depose and say that he was well acquainted with Thomas Biddle, Elihu Chauncey, and S. Jaudon, three of the grantors and parties to the annexed deed, that he saw them sign and heard them ac-

knowledge that they had signed, sealed, delivered and
330 executed the said deed as their several free and voluntary act and deed for the uses and purposes therein mentioned and that he, the said Joseph Coweputhnant, subscribed his name at the same time as a witness thereto, and did also the other subscribing witness A. G. Jaudon, and the deponent further said that on the day and year aforesaid he saw Thomas Biddle, Elihu Chauncey and S. Jaudon, the financial agents of the Pensacola Association, sign, seal, deliver and execute, and heard them acknowledge they had so executed the said annexed deed for and on behalf of the said association, for the uses and purposes therein mentioned, and that the said Joseph Coweputhnant and A. G. Jaudon then became subscribing witnesses to said signing, sealing and delivery.

In testimony whereof, I have hereunto set my hand [and] seal the day and year above written.

W. H. MAXWELL,
Florida Commissioner.

Schedule "A" Referred to in the Annexed Indenture.

William H. Chase,	One ninth part.
Walter Gregory,	Three quarters of one ninth part.
William A. Booth,	One ninth part.
S. V. S. Wilder,	One ninth part.
John A. Cameron,	One eighteenth part.
Thomas M. Blount,	Seventeenth eighteenths of one ninth part.
Morris Robinson,	One eighteenth part.
Thomas Biddle,	One eighteenth part.
Charles Agustus Davis,	One eighteenth part.
Elihu Chauncey,	One eighteenth part.
Jackson Morton,	One quarter of a ninth part.
James H. Leverich,	One eighteenth of one ninth part.
James D. Graham,	One eighteenth of one ninth part.
Henry Hyer and Jointly.	One eighteenth of one ninth part.
Charles Le Baron, Pensacola Association,	One eighteenth part.
Samuel Jaudon,	One eighteenth part.

331 *Schedule "B" Referred to in Annexed Indenture.*

Schedule of lots in the New City of Pensacola sold on the 3rd, 5th, and 4th days of January, 1837.

By William H. Chase, trustee of the Pensacola Land Company.

No. of square.	No. of lots.
1.	1, 2, 3, 4, 5, 6, 7, 8.
2.	1, 2, 3, 4, 5, 23, 24, 25, 26, 27, 28, 29, 30.
3.	18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30.
5.	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 26, 27, 28, 29, 30.
6.	1, 2, 3, 4, 5, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25.
7.	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 28, 29, 30.
8.	13, 14, 15, 16, 17, 18, 20, 21, 22, 23.
9.	1, 2, 3, 4, 5, 6, 7, 8, 9, Lo, [10], 11, 12, 13, 14, 15, 16, 17, 18, 18, 19, 20.
10.	1, 2, 3, 4, 5, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30.
11.	11, 12, 13, 14, 15, 26, 27, 28.
51.	19, 20.
12.	26, 27, 28.
13.	13, 22, 23, 24, 25, 26, 27, 28, 29, 30.
332 14.	1, 2, 3, 23, 24, 25, 26, 27, 28, 29, 30.
39.	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 16, 17, 18.
40.	1, 2, 3, 6, 8, 25, 26.
41.	1, 2, 3, 4, 5, 6, 7, 8, 9, 10.
42.	1, 2, 3, 4, 5, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23.
42.	24, 25, 26, 27, 28, 29, 30.
43.	1, 2, 3, 4, 5, 6, 7, 8, 9, 10.
44.	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 13.
47.	26, 27, 28, 29, 30.
50.	11, 12, 13, 14, 15, 16, 17, 18.
49.	16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30.
51.	1, 2, 3, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 26, 27, 28, 29, 30.
52.	1, 2, 3, 4, 5, 25, 26.
53.	1, 2, 3, 4, 5, 26, 27, 28, 29, 30.
54.	11, 12, 13, 14, 15.

15. 1, 2, 3, 11, 21, 13, 14, 22, 23, 24, 25, 26, 27, 28, 29, 30.
16. 1, 2, 3, 23, 24, 25, 26, 27, 28, 29, 30.
17. 1, 2, 3, 7, 26, 27, 28, 29, 30.
18. 1, 2, 3, 23, 24, 25, 26, 27, 28.
19. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21.
20. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 26, 27, 28, 29, 30.
19. 22, 23, 24, 25, 26, 27, 28, 29, 30.
21. 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30.
22. 1, 2, 3, 26, 27, 28, 29, 30.
23. 26, 27, 28, 29, 30.
24. 1, 2, 3, 4, 5, 26, 27, 28, 29, 30.
25. 1, 2, 3, 4, 5, 25, 26, 27, 28, 29, 30.
26, 1, 2, 3, 4, 5, 11, 12, 13, 14, 15.
27. 1, 2, 9, 10, 16, 20, 21, 22, 23, 24, 25, 26, 27.
28. 1, 2, 3, 6, 8, 10.
29. 10, 11, 12, 13, 14, 15, 16.
30. 10, 11, 12, 13, 14, 15, 16.

333 31. 10, 11, 12, 13, 14, 15, 16, 17.

55. 1, 2, 3, 4, 5, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30.
56. 11, 12, 13, 14, 15. 15.
58. 1, 2, 3, 11, 12, 13, 14,
59. 26, 27, 28, 29, 30.
60. 26, 27, 28, 29, 30.
62. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26.
61. 11, 12, 13, 14, 15, 26, 27, 28, 29, 30.
62. 27, 28, 29, 30.
63. 1, 2, 3, 4, 5, 26, 27, 28, 29, 30.
64. 11, 12, 13, 14, 15, 26, 27, 28, 29, 30.
65. 11, 12, 13, 14, 15, 26, 27, 28, 29, 30.
66. 11, 12, 13, 14, 15, 26, 27, 28, 29, 30.
67. 10, 11, 12, 13, 14, 15, 16, 26, 27, 28, 29, 30.
68. 26, 27, 28, 29, 30.
69. 26, 27, 28, 29, 30.
71. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27.
72. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23.
72. 24, 25, 26, 27, 28.

32. 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25.
33. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 26, 27, 28, 29, 30.
34. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30.
37. 26, 27, 28, 29, 30.
38. 11, 12, 13, 14, 15, 26, 27, 28, 29, 30.
346. 16, 17, 18, 19, 20, 21, 22, 23, 24, 25.
347. 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19.
348. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10.
350. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16.
73. 16, 17, 18, 19, 20, 21, 22, 23, 24, 25.
74. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10.
75. 14, 15, 23, 24, 25, 26, 27.
76. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10.
77. 16, 17, 18, 19, 20, 21, 22, 23, 24, 25.
80. 10, 13.
78. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10.
301. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15.
334 81. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 26, 27, 28, 29, 30.
319. 7.
321. 12, 13, 14, 15, 16, 17.
331. 1, 2, 3, 4, 5, 6, 7, 15, 22, 23, 24, 25, 26, 27, 28.
333. 1, 2, 3, 4, 5, 15, 16, 17, 18, 19, 20, 21.
342. 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19.
180. 23, 24, 25.
181. 1, 2, 3.
190. 23, 24, 25.
191. 1, 2, 3.
200. 23, 24, 25.
201. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10.
212. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10.
213. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 26, 27, 28, 29, 30.
220. 1, 2, 3, 4, 5, 6, 7, 8, 9, Lo.
229. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10.

303. 1, 2, 3, 4, 5, 6, 7, 8.
82. 1, 2, 3, 4, 5, 22, 23, 24, 25, 26, 27, 28, 29, 30.
83. 1, 2, 3, 4, 5, 26, 27, 28, 29, 30.
84. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 26, 27, 28, 29, 30.
87. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10.
85. 21, 22, 23, 24, 25, 26, 27, 28, 29, 30.
313. 1, 2.
86. 11, 12, 13, 14, 15, 26, 27, 28, 29, 30.
89. 1, 2, 3, 26, 27, 28, 29, 30.
90. 26, 27, 28, 29, 30.
91. 26, 27, 28, 29, 30.
92. 26, 27, 28, 29, 30.
94. 26, 27, 28, 29, 30.
96. 23, 24, 25.
97. 1, 2, 3, 26, 27, 28, 29, 30.
319. 1, 2, 3, 4, 5, 6.
105. 26, 27, 28, 29, 30.
109. 1, 2, 3, 8, 9, 10.
124. 23, 24, 25.
138. 26, 27, 28, 29, 30.
141. 1, 2, 3.
155. 23, 24, 25.
168. 23, 24, 25.

302. 1, 2, 3.
304. 1, 2, 3, 4, 5, 6, 7, 8, 9.
308. 26, 27, 28, 29, 30.
310. 1, 2, 3, 4, 5, 6.
312. 1, 2, 3, 4, 5.
309. 11, 12, 13, 14, 15, 26, 27, 28, 29, 30.
316. 1, 2, 3, 4, 5, 6, 7, 11, 12, 23, 24, 8, 9, 10, 25, 26, 27.
316. 13, 14, 15, 16, 17, 18, 19, 20, 21.
317. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25.
318. 1, 2, 3, 4, 5, 17, 18, 19, 20, 21.
311. 1, 2, 3, 4, 5.
108. 23, 24, 25.
122. 26, 27, 28, 29, 30.
125. 1, 2, 3.
140. 23, 24, 25.
154. 26, 27, 28, 29, 30.
156. 1, 2, 3.
169. 1, 2, 3.

STATE OF NEW YORK,
City and County of New York, ss.

335 By this public instrument be it known to all whom it may concern that I, William H. Maxwell, commissioner in and for the State of New York and resident in the City of New York, duly commissioned by the Governor of the

Territory of Florida, and authorized by law to take the acknowledgement of deeds, letters of attorney, mortgages, contracts or other writings under seal with full power and authority to administer oaths and affirmations, and to take depositions, etc., do hereby certify that on the sixth day of May, 1837, before me, said commissioner, personally came Beesely Robinson, Esq., attorney at law, of New York City, well known to me to be one of the subscribing witnesses to the annexed deed, and being by me duly sworn according to law, did on his oath dispose and say he was well acquainted with Charles Augustus Davis, Morris Robinson, Sampson V. S. Wilder and William A. Booth, four of the grantors and parties to the annexed deed, that he saw them severally sign, and heard them acknowledge they had signed, sealed, delivered and executed the same as their several, free and voluntary act and deed for the uses and purposes therein expressed, and that he subscribed his name as a witness thereof. In testimony whereof, I have hereunto set my hand and seal, the day and year above written.

W. H. MAXWELL,
Florida Commissioner.

TERRITORY OF FLORIDA,
County of Escambia, ss.

Personally appeared before me Mr. [M.] Crupper, clerk of the County Court of Escambia County, in the territory aforesaid, Walter Gregory, John A. Cameron, Thomas M. Blount, James D. Graham, Henry Hyer and Charles Le Baron, and acknowledged that they had executed the foregoing instrument of writing for the uses and purposes therein mentioned.

In testimony whereof, I, the said Mr. [M.] Crupper, have hereunto set my hand and affixed my seal of office at Pensacola, in the County of Escambia and Territory of Florida, this first day of March, in the year one thousand eight hundred and thirty-seven.

M. CRUPPER, *Clerk.*

TERRITORY OF FLORIDA,
County of Escambia, ss.

Personally appeared before me M. Crupper, clerk of the County Court of Escambia County, in the territory aforesaid, Jackson Morton, and acknowledged that he had executed the foregoing instrument of writing for the uses and purposes therein mentioned.

In witness whereof, I, the said M. Crupper, have hereunto

set my hand and affixed my seal of office at Pensacola, in
336 County of Escambia and Territory of Florida, this third day of March in the year one thousand eight hundred and thirty-seven.

M. CRUPPER, *Clerk.*

[Plan of the Old and New Town of Pensacola.]
Used before me on final hearing.

T. H. McCULLAGH, *Judge.*

Note by Clerk:

At the time of Supreme Court at that same date of May which is referred June 10-80 being filed my file was at such time of making taken out therefrom, only been returned 10th June, 1882. Maxwell, dated, read in evidence.

W. H. DAVISON, *et al.*,
vs.
J. C. PETTERSON, *et al.*

Filed this eight day of August, A. D. 1888.

Deed from William H. Chase, *et al.*, to trustees of Pensacola City Company, 13th day of January, 1837. Filed May 11th, 1886.

Pensacola Land Company deed to Pensacola City Company, Jan. 13th, 1837.

Ejectment.

E. J. CARO, *et al.*,
vs.
C. M. HOOPER.

Filed March 12th, 1879.

E. WENTWORTH, *Clerk.*

Recorded June 28th, 1837. Recorded in book "D", page 44. $20.00.

M. CRUPPER, *Clerk.*

This paper was before me in evidence on final but I never which I now in application.

Offered by defendants: Exhibit 32.

PENSACOLA CITY CO. ASSO.
to
PENSACOLA CITY CO. CORPO.

This indenture made and entered into on the thir-
337 teenth day of May, in the year of our Lord one thousand eight hundred and seventy, between Samuel Jandon and Nathaniel Thurston, both of the State of New York, trustees of the Pensacila City Company, (a joint stock association) of the first part, and the Pensacola City Company (a corporation chartered by the Legislature of the State of Florida) of the second part.

Witnesseth. Whereas the stockholders of the Pensacola City Company (the joint stock association aforesaid) at a meeting held in the City of New York on the ninth day of December one thousand eight hundred and sixty-nine, passed a resolution authorizing and directing the parties of the first part, trustees as aforesaid to sell unto one A. E. Maxwell the entire property of the said company for the consideration hereinafter expressed, and upon the terms then and there offered by him; and whereas in subsequent negotiations with said Maxwell it was agreed that the title and conveyance of said property should be made to him upon compliance with the terms aforesaid, and under said agreement to the said parties of the second part.

Now therefore these presents witness, that the said parties of the first part, trustees as aforesaid, for and in consideration of the sum of one hundred and fifteen thousand dollars to them in hand paid by the parties of the second part, the receipt whereof is hereby acknowledged, have bargained, sold, granted, released, quit claimed and conveyed unto the said parties of the second part, their successors and assigns, all those several tracts, lots, and parcels of land situate in the County of Escambia, State of Florida, known and described as follows, viz.:

All that tract lying and being in the City of Pensacola and County aforesaid in section seven (7) and twenty-two (22) township two (2) south and ranges twenty-nine (29) and thirty (30) west, according to the United States survey, and known as the Shackleford tract, containing in section seven (7) eighty-two 4-100 acres, and in section twenty-two (22) five hundred and sixty-four and 3-100 acres. Also all that tract of land lying and being in the City of Pensacola, in section eight (8) and twenty-one (21) of said township and ranges, according to said survey, and known as the Chabeaux tract, containing in section eight (8) two hundred and twenty-six acres or *three*

abouts, and in section twenty-one (21) nine 70-100 acres. The said Shackleford and Chabaux tracts together being bounded on the north by section (6) and twenty (20) according to the aforesaid survey, on the east by Bayou Texar, on the south by the Bay of Pensacola, and on the west by the Old City of Pensacola, and a tract of land known as the William King tract.

Also lot number two (2) in tractional [fractional] sec-
338 tion six (6), township two (2), south and range twenty-nine (29) west, according to the said survey, containing ninety-three 2-100 acres, and being in said city. Also lot one (1) containing eighty-seven (87) and 50-100 acres, and lot two (2) containing eighty-three 30-100 acres, and lot three (3) containing one hundred and thirty four and 20-100 acres, all in fractional section twenty (20) township two (2) south range thirty (30) west, according to said survey. Also lot one (1) containing one hundred and twenty-two and 75-100 acres, and a lot two (2) containing thirty-eight and 75-100 acres, both in fractional section two (2) township (2) south range thirty (30) west according to said survey. Also the tract of land in said city known as the Belmont tract, and described according to the survey aforesaid as fractional section twenty-three (23) township (2) south range thirty (30) west, containing one hundred and fifty-nine and 75-100 acres. Also the undivided one-half of section thirty (30) township two (2) south range thirty (30) west, being originally a Spanish Grant to one Juan Cortez, lying about two miles northwest from the City of Pensacola, known as the Oaks tract, and containing according to Spanish survey one hundred and thrity arpents. Together with all and singular hereditaments, improvements, rights, privileges, and appurtenances thereunto belonging or in any wise appertaining including all the estate right, title, interest, claim and demand whatsoever kind of the said parties of the first part, trustees aforesaid, and of the said Pensacola City Company (joint stock association as aforesaid) in law and equity of, in and to the lands described above and every part and parcel thereof not hereinafter accepted.

To have and to hold the said tract lots, or parcels of land with the rights, privileges, improvements, hereditaments and appurtenances thereunto belonging, and all claim in law and equity thereto, unto the said parties of the second part, their successors and assigns forever.

But it is understood by said parties of both parts, that certain small fractional portions of said lands, heretofore separated and sold from the main bodies thereof, by William H. Chase, trustee, previous to January 13th, 1837, or since by the said parties of the first part or by their predecessors in the

same trust, are accepted and reserved from this sale and conveyance, save such rights and claims in law or equity on the same as may remain in and to the said parties of the first part, trustees as aforesaid, or the said Pensacola City Company (the joint stock association as aforesaid) for which portions, the same being too whiminous [voluminous] to insert here, reference is made to the book of records for the county
339 aforesaid, wherein the conveyances relating to the sale of such portions are recorded.

In witness whereof said parties of the first part, trustees as aforesaid have hereunto set their hands and seals this the day and year first aforesaid.

(Signed) S. JAUDON, [L. S.]
" N. THURSTON. [L. S.]

Signed, sealed and delivered in the presence of:
(Signed) R. T. HAINES, Jr.,
" ARTHUR KNAPP.

The word "eighty" erased and the word "thirty" interlined on fourth line from bottom of third page. And the words "by William H. Chase trustee, &c., prior to January 13th, 1837, or since" interlined after the word "thereof" on fifth page before signing.

STATE OF NEW YORK,
City & County of New York. ss.

Be it remembered that on the 13th day of May, A. D. 1870, before me Arthur W. Knapp commissioner in and for the State of New York duly commissioned by the Governor of the State of Florida and empowered to take the proof or acknowledgment of any deed or other instrument under seal to be used or recorded in said State, personally appeared Samuel Jaudon and Nathaniel Thurston known to me to be the grantors in the foregoing conveyance named I having made known to them the contents thereof they acknowledged that as trustees therein named they had signed sealed and delivered the same as their act and deed for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and seal the day and year herein just above written.

(Signed) ARTHUR W. KNAPP,
Florida Commissioner in New York.

STATE OF FLORIDA,
Escambia County.

The foregoing recorded in book of deeds G at pages 229-30-31 this July 15th, 1870.

(Signed) R. A. STEARNS,
Clerk Ct. Court.

Filed June 10th, 1882.

(Signed) F. E. DE LA RUA,
Clerk Ct. Court.
Per JOHN DE LA RUA,
Deputy Clerk.

340 This paper before me in evidence on the final hearing of the case, but I neglect to note it, which I now do on application of plaintiffs.

(Signed) A. E. MAXWELL, *Judge.*
May 24, '82.

(W. A. Blount, counsel for defendants:) I now introduce deeds for the purpose of showing the claim of the defendants in this suit, which documents are set out in words and figures as follows:

Exhibit "34."

Offered by defendants.

Peter Knowles to Thos. C. Watson.

This indenture, made this 16th day of August, 1886, between Peter Knowles of the first part, and Thos. C. Watson, of the second part, witnesseth: That the said party of the first part for and in consideration of the sum of thirty-five hundred dollars lawful money of the United States of America to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has remised, released, and quitclaimed unto the said party of the second part, and to his heirs and assigns forever, all of the following described, situate, lying and being in the City of Pensacola, County of Escambia, State of Florida, to-wit: Lots one to ten, and seventeen to twenty inclusive in block one hundred and seventeen (117) lots one to twenty inclusive in block one hundred and twenty-three (123) lots, six, seven, eight in block one hundred and thirty seven (137) lots eleven (11) to eighteen inclusive in block one hundred and forty (140) lots three to ten and twelve to twenty inclusive in block one hundred and eighty-seven (187) lots

twelve to nineteen inclusive in block one hundred and eighty-eight, lots six to fifteen inclusive in block one hundred and ninety-one (191), lots one to eight inclusive in block two hundred and seven (207), lots one to twenty inclusive in block two hundred and fifty (250), lots one to twenty inclusive in block two hundred and fifty-two, lots one to seven inclusive and lot fifteen in block two hundred and fifty-four lots one to twenty inclusive in block two hundred and fifty-five (255) lots one to twenty inclusive in block two hundred and fifty-seven (257) lots one to twenty inclusive in block two hundred and eighty (280) lots one to twenty inclusive in block two hundred and eighty-two (282) lots one to twenty inclusive in block two hundred and ninety-five (295) lots one to twenty inclusive in block two hun-
341 dred and ninety-six (296) lots one to twenty inclusive in block three hundred and two (302) lots one to twenty inclusive in block three hundred and fifty-four (354) lots one to three and eighteen to twenty inclusive in block three hundred and seventy-two (372) lots one to three in block three hundred and fifty-two (352) lots six to fifteen inclusive in block three hundred and fifty one (351) lots one to five and sixteen to twenty inclusive in block two hundred and ninety-three (293) lots eleven to twenty inclusive in block two hundred and ninety-two (292) lots six to ten inclusive in block two hundred and eighty-seven (287) lots one to five inclusive in block two hundred and seventy (270) lots six to fifteen inclusive in block two hundred and forty-six (246) lots six to ten inclusive in block two hundred and eleven (211) lots one to five and eleven to twenty inclusive in block one hundred and ninety-two (192) lots six to fifteen inclusive in block one hundred and eighty-nine (189) lots one to ten inclusive in block one hundred and eighty-eight (188) lots one to five and sixteen to twenty inclusive in block one hundred and seventy (170) lots six to fifteen inclusive in block one hundred and fifty-nine (159) lots six to thirteen inclusive in block one hundred and forty-eight (148) lots one to five inclusive in block one hundred and forty (140) lots sixteen to twenty inclusive in block one hundred and thirty-seven. All being situated in the New City of Pensacola as per plan and survey of Harding and Lee in 1870. Also lots twenty-eight to thirty inclusive in block one hundred and thirteen, lot seventeen in block one hundred and thirty-one, and lots one, two, nine, ten, and twenty-five to twenty-seven inclusive in block one hundred and fifty all being situated west of Tarragona Street in east King tract, sec. 19 T. 2 S. R. 30 W. Also lots eighteen and nineteen in block seven (7) lots six, seven, and eight in block eighty-four (84) lots one to twenty inclusive in

block one hundred and twenty-eight (128) lot eleven in block one hundred and sixty-one (161) lot thirteen in block one hundred and seventy-eight (178) lot sixteen in block two hundred and nine (209) all being situated in the water front of Pensacola as per plan and survey of Lee & Harding. Together with all and singular the tenements hereditaments, and appurtenances thereunto belonging, or in anywise appertaining. To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, with the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part, has hereunto set his hand and seal the day and year first above written.

(Signed) PETER KNOWLES. [SEAL]

342 Sealed and delivered in the presence of:

(Signed) H. H. THORNTON,

(Signed) WM. FISHER.

STATE OF FLORIDA,
County of Escambia.

On the 16th day of August, A. D. 1886, before me, personally came Peter Knowles, known to me to be the indivdual described in, and who executed the foregoing instrument, and who acknowledged that he executed the same.

(Signed) WM. H. KNOWLES,
Notary Public.

Recorded August 30, 1886, in deed book No. two (2) at page 320 to 322.

(Signed) F. E. DE LA RUA,
Clerk Ct. Court, Escambia County, Fla.

Offered by defendants. "Exhibit 35."

WALTER TATE
to
C. C. YONGE.

Warranty Deed.

STATE OF FLORIDA,
Escambia County.

Know all men by these presents, that I, Walter Tate, a widower, for and in consideration of seventy-five ($75.00) dollars, the receipt whereof is hereby acknowledged, do bargain, sell, convey and grant unto C. C. Yonge and his heirs, executors, administrators and assigns, forever, the following described property, situate, lying and being in the County of Es-

cambia and State of Florida, to-wit: Lot twenty (20) in block ninety-eight (98) of the New City Tract of the City of Pensacola, according to the map of said City published by Thos. C. Watson in 1884. Together with all and singular, the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, free from all exemptions and right of homestead.

And I covenant that I am well seized of the said property, and have a good right to convey the same; that it is free of incumbrance, and that I and my heirs, executors, and administrators, the said grantee and his heirs, executors, administrators and assigns, in the quiet and peaceable possession and enjoyment thereof, against all persons lawfully claiming the same, shall and will warrant and defend except as to- taxes due hereafter.

343 In witness whereof I have hereunto set my hand and seal this 16th day of August, A. D. 1894.

(Signed) WALTER TATE. [SEAL]

Signed, sealed and delivered in the presence of:
(Signed) SAML. C. PINNEY,
" J. J. HOOTON.

STATE OF FLORIDA,
County of Escambia.

Before the subscriber personally appeared Walter Tate, known to me to be the individual described, and acknowledged that he executed the foregoing instrument for the uses and purposes therein set forth.

Given under my hand and official seal this 16th day of August, A. D. 1894.

(Signed) J. J. HOOTON,
Notary Public State at Large.

Received this 18 day of August, A. D. 1894 at 10 o'clock a. m., and recorded in volume 14, page 153 the 18 day of August, 1894.

(Signed) JNO. DE LA RUA,
Clerk Circuit Court.
Per J. W. McCALLISTER, *D. C.*

Exhibit 36.

Offered by Defendants.

THOS. C. WATSON
to
W. A. BLOUNT.

Warranty Deed.

STATE OF FLORIDA,
Escambia County.

Know all men by these presents, that we, Thos. G. Watson and Annie S. Watson (husband and wife), for and in consideration of the sum of one ($1.00) dollar, and other valuable considerations, to us in hand paid, by William A. Blount, have granted, bargained and sold, and by these presents do grant, bargain, sell and convey unto the said William A. Blount, and his heirs and assigns forever, the following described real estate, situate lying and being in the City of Pensacola, County of Escambia, and State of Florida, to-wit: lots one, two, three, four and five (lots 1 to 5, inclusive), in block number seventy-two (72), of the New City Tract, according to map of said city copyrighted by Thos. C. Watson in 1884. Together with the improvements thereon, and the hereditaments and appurtenances
344 thereunto belonging or in anywise appertaining; to have and to hold the said above described premises unto the said William A. Blount, and his heirs and assigns, forever, free from all exemption or homestead right or claim of ours, the said grantors, if any such right or claim we possess. And we, the said grantors, for ourselves and our heirs, do covenant with the said grantee, his heirs and assigns, that we are well seized of the said property, and have a good right to convey the same; that it is free from any lien or incumbrance in law or equity, and that said grantors shall and will warrant and these presents forever defend the said premises unto the said grantee, his heirs and assigns, against the lawful claim of all and every person or persons whomsoever.

In testimony whereof, we have hereunto set our hands and seals this second day of March, 1899.

(Signed) THO. C. WATSON, [SEAL]
(Signed) ANNIE S. WATSON. [SEAL]

Signed, sealed and delivered in presence of:
(Signed) JAMES C. WATSON,
(Signed) WM. C. HOOTON.

STATE OF FLORIDA,
Escambia County.

This day, before the undersigned, personally appeared Thos. C. Watson and Annie S. Watson, to me well known to be the individuals described in and who executed the foregoing deed of conveyance, and acknowledge that they executed the same for the uses and purposes therein expressed, and the said Annie S. Watson, wife of the said Thos. C. Watson, upon a private examination by me, held separate and apart from her said husband, acknowledged and declared that she executed the same freely and voluntarily, and without fear or apprehension, compulsion or constraint, of or from her said husband, and for the purpose of relinquishing, renouncing and conveying all her rights, of whatever kind, in and to the said property.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this second day of March, A. D. 1899.

(Signed) JAMES C. WATSON,
Notary Public, State at Large.

STATE OF FLORIDA,
County of Escambia.

On this 4th day of March, A. D. 1899, at 10.15 o'clock A. M., this instrument was filed for record, and the same being properly authenticated, I have duly recorded the same on pages 447 and 448 of book 21 of deeds in the public records of said county.

345 In witness whereof, I have hereunto set my hand and affixed the seal of the Circuit Court of the First Judicial Circuit of said State, in and for said County.

(Signed) A. M. McMILLAN,
Clerk of the Circuit Court of Escambia County, Fla.

Exhibit 37.

Offered by Defendants.

YONGE HEIRS
to
W. A. BLOUNT.

STATE OF FLORIDA,
Escambia County.

Know all men by these presents, that we, Julia A. Yonge, Julia J. Yonge, C. Archie Yonge, P. K. Yonge and Lucy C. Yonge, his wife, J. E. Yonge and L. B. Yonge, his wife, C. C. Yonge, Jr. and C. F. Yonge, his wife, and P. K. Yonge,

as trustee for A. Louise Yonge, Julian C. Yonge, J. E. Davis Yonge, Henry M. Yonge, Malcolm R. Yonge and Chandler C. Yonge, and C. C. Yonge, Jr., as trustee for C. Lowery Yonge, Walter C. Yonge, L. Ernestine Yonge, Julia C. Yonge and Kate Yonge, for and in consideration of twelve hundred and fifty-six 25-100 dollars ($1,256.25), the receipt whereof is hereby acknowledged, do bargain, sell, convey and grant unto Wm. A. Blount, his heirs, executors, administrators and assigns, forever the following described property, to-wit: lots four (4), five (5), six (6), in block one hundred and twenty-two (122); lots eleven (11), twelve (12), thirteen (13) and fourteen -14), in block seventy-five (75); lots eleven (11) and twelve (12), in block fifty-three (53); lots three (3), four (4), five (5) and six (6), and seven (7), in block sixty-eight (68); east thirty (30) feet of lot two (2) and lots three (3), five (5), six (6), in block thirty-six (36); all in the New City of Pensacola, according to plan thereof by Lee & Harding in Escambia County, Florida. Together with all and singular, the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, free from all exemptions, and right of homestead.

In witness whereof, we have hereunto set our hands and seals this 2nd day of October, A. D. 1890.

(Signed) JULIA A. YONGE, [SEAL]
By P. K. YONGE, *Atty. in fact,*
(Signed) JULI J. YONGE, [SEAL]
By P. K. YONGE, *her Atty. in fact,*
346 (Signed) C. ARCHIE YONGE,]SEAL]
By P. K. YONGE, *her Atty. in fact,*
(Signed) P. K. YONGE, [SEAL]
(Signed) L. C. YONGE, [SEAL]
(Signed) J. E. YONGE, [SEAL]
(Signed) L. B. YONGE, [SEAL]
(Signed) C. C. YONGE, Jr., [SEAL]
(Signed) L. F. YONGE, [SEAL]
(Signed) P. K. YONGE, [SEAL]

As Trustee for A. Louise Yonge, Julian C. Yonge, J. E. Davis Yonge, Henry M. Yonge, Malcolm R. Yonge and Chandler C. Yonge,
(Signed) C. C. YONGE, Jr., [SEAL]

As Trustee for C. Lowery Yonge, Walter C. Yonge, L. Ernestine Yonge, Julia C. Yonge and Kate Yonge.

Singed, sealed and delivered in presence of:
(Signed) JOE COLLINS,
(Signed) J. J. HOOTON.

STATE OF FLORIDA,
County of Escambia.

Before the subscriber, personally appeared P. K. Yonge, attorney in fact for Julia J. Yonge, C. Archie Yonge, Julia A. Yonge, P. K. Yonge and Lucy C. Yonge, his wife, J. E. Yonge and L. B. Yonge, his wife, C. C. Yonge Jr., and C. F. Yonge, his wife, and P. K. Yonge, as trustee for A. Louise Yonge, Julian C. Yonge J. E. Davis Yonge, Henry M. Yonge, Malcom R. Yonge and Chandler C. Yonge, and C. C. Yonge, Jr., as trustee for C. Lowery Yonge, Walter C. Yonge, L. Ernestine Yonge, Julia C. Yonge, and Kate Yonge, known to me to be the individuals described, and acknowledged that they executed the foregoing instrument for the uses and purposes therein set forth and the said Lucy C. Yonge and L. B. Yonge, and C. F. Yonge, wives of the said P. K. Yonge and J. E. Yonge and C. C. Yonge, Jr., on a private examination by me, held separate and apart from their respective husbands, acknowledged and declared, each for herself, that she executed the same freely and voluntarily, and without fear, apprehension, compulsion or constraint of or from her husband, and for the purpose of renouncing, relinquishing and conveying all her right of whatsoever kind in and to the said property.

Given under my hand and official seal, this 25th day of November, A. D. 1890.

(Signed) J. J. HOOTON,
Notary Public, State at Large.

347 *"Exhibit* 38."

Offered by Defendants.

PETER KNOWLES
to
W. A. BLOUNT.

Warranty Deed.

STATE OF FLORIDA,
Escambia County.

Know all men by these presents, that I, Peter Knowles, for and in the consideration of the sum of two hundred and fifty ($250.00) dollars, the receipt whereof is hereby acknowledged, do bargain, sell, convey and grant unto William A. Blount, his heirs, executors, administrators and assigns, forever, the following described real estate to-wit: lots twenty (20), in block seventy-three (73), and lots nine, ten, fifteen, sixteen, seventeen, eighteen, nineteen, twenty (9, 10, 15, 16, 17, 18, 19,

20), in block seventy-five (75), in the New City of Pensacola, Florida. Together with all and singular, the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, free from all exemptions and right of homestead.

And I covenant that I am well seized of the said property, and have a good right to convey the same; that it is free from incumbrance, and that I, my heirs, executors and administrators, the said grantee, his heirs, executors administrators and assigns, in the quiet and peac-able possession and enjoyment thereof against all persons lawfully claiming the same, shall a [and] will forever warrant and defend.

In witness whereof I have hereunto set my hand and seal, this 3rd day of March, A. D. 1899.

(Signed) PETER KNOWLES. [SEAL]

Signed, sealed and delivered in the presence of:
(Signed) JOS. RIERA,
(Signed) J. W. HYER.

STATE OF FLORIDA,
County of Escambia.

Before the subscriber, personally appeared Peter Knowles, known to me to be the individual described, and acknowledged that he executed the foregoing instrument for the uses and purposes therein set forth.

Given under my hand and official seal, this 3d day of March, 1899.

(Signed) J. WHITING HYER, *N. P.*

Received this 4th day of March, A. D. 1899, at 10:15
348 o'clock A. M., and recorded in volume 21, page- 448 and 449, the 4th day of March, 1899

(Signed) A. M. McMILLAN,
Clerk Circuit Court.

Exhibit 39.

Offered by Defendants.

EDWARD W. PERRY
to
WILLIAM BLOUNT.

Deed.

STATE OF FLORIDA,
Escambia County.

Know all men by these presents, that I, Edward W. Perry, for and in consideration of the sum of one dollar, and other

good and valuable considerations, to me in hand paid by William A. Blount, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell and convey unto the said W. A. Blount, his heirs and assigns forever, the following described real estate, situate, lying and being in the City of Pensacola, County of Escambia, State of Florida, to-wit: Lots eight (8) to thirteen (13), inclusive, in block sixty-eight (68), New City, according to plan of Lee & Harding.

Together with the improvements thereon, and the hereditaments and appurtenances thereunto belonging, or in anywise appertaining; to have and to hold the said above described premises unto the said W. A. Blount, his heirs and assigns, forever, free from all exemption or homestead right or claim from me, the said grantor, if any such right or claim I possess.

In testimony whereof, I have hereunto set my hand and seal, this 24th day of May, A. D. 1892.

EDWARD W. PERRY. [SEAL]

Signed, sealed and delivered in the presence of:

A. A. FISHER,
EDWARD MASSEY,

(Deed.)

Edward W. Perry to William A. Blount, State of Florida, County of Escambia, on this 27th day of May, at 2 o'clock P. M., this instrument was filed for record, and the same being properly authenticated, I have duly recorded the same on pages 384 of book No. 11 in the public records of said county.

In witness whereof, I have hereunto set my hand and affixed the seal of the Circuit Court, ... of the Judicial Circuit of said State, in and for said County.

Fees $1.00.

JOHN DE LA RUA, *Clerk.*

349 *Exhibit* 40.

Offered by Defendants.

PETER KNOWLES
to
W. A. BLOUNT.

Deed of Realty.

STATE OF FLORIDA,
Escambia County.

Know all men by these presents, that I, Peter Knowles, for and in consideration of the sum of twelve hundred and thirty-

seven and 50-100 dollars (-1237.50), the receipt whereof is here by acknowledged, do bargain, sell, convey and grant unto W. A. Blount, his heirs, executors, administrators and assigns, forever the following described porperty to-wit: lots six (6), seven (7) and eight (8), in block seventy-five (75); lots seven (7), eight (8), nine (9) and ten (10), in block fifty (50); one half (½) lot six (6), in block forty-nine (49); lots fourteen (14), fifteen (15) and sixteen (16), in block sixty-eight (68); lots four (4) and eight (8), in block thirty-five (35), and lots one (1), two (2), three (3), four (4), and five (5), in block one hundred and sixteen (116); all in the New City of Pensacola, according to the plan thereof by Harding & Lee. Together with all singular, the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining, free from all exemptions and right of homestead.

In witness whereof, I have hereunto set my hand and seal this 30 day of July, A. D. 1890.

(Signed) PETER KNOWLES. [SEAL]

Signed, sealed and delivered in presence of:
(Signed) W. T. WILLIAMS,
(Signed) FERNANDO I. MORENO.

STATE OF FLORIDA,
County of Escambia.

Before the subscriber, personally appeared Peter Knowles, known to me to be the individual described, and acknowledged that he executed the foregoing instrument for the uses and purposes therein set forth.

Given under my hand and official seal, this 31st day of July, 1890.

(Signed) WM. K. KNOWLES,
Notary Public.

Received the 31st day of July, A. D. 1890, at 9 o'clock A. M., and recorded in volume 9, page 59, this 15th day of August, 1890.

(Signed) F. E. DE LA RUA,
Clerk Circuit Court,
Per JOHN DE LA RUA, *D. C.*

350 *Exhibit* 41.

Offered by Defendants.

A. A. FISHER, Master,
to
W. A. BLOUNT.

STATE OF FLORIDA,
Escambia County.

Know all men by these presents, that whereas I, A. A. Fisher, was, on the 2nd day of November, 1896, by virtue of a decree made [by] the Hon. John W. Malone, Judge of the Second Judicial Circut, because of the absence from the state of the Hon. W. D. Barnes, Judge of the First Judicial Circuit, in a cause then and there pending wherein M. L. Sullivan, B. B. Anderson and M. C. Anderson were complainants and Walter Ttate, F. G. Renshaw, A. E. McDavid and Fred Bauer were defednants, appointed special master to sell certain real property hereinafter described.

That whereas, in compliance with the said decree, I did advertise the sale of the same in the Pensacola Daily News, a newspaper published and printed in the County of Escambia, Florida, for a period of four weeks prior to the said sale, and did, on the seventh day of December, A. D. 1896, at the legal hour of sale, offer the said property at public auction, in front of the Courthouse door, in the City of Pensacola, to the highest bidder, for cash.

And whereas, W. A. Blount was the last, best and highest bidder for said property at said sale, bidding therefor the sum of $8000.00, and the said property was thereupon knocked down and sold to the said W. A. Blount for the said sum.

Now therefore, by virtue of the authority in me vested, and for and in consideration of the said sum of $8000.00, I do bargain, sell convey and grant unto the said W. A. Blount, his heirs, executors, administrators and assigns, forever, the said property hereinafter mentioned, which is described as follows, to-wit:

Lot 1 to 12, inclusive, in block 38; lot 6 to 16, inclusive, in block 39, all of block 41 and lots 11 to 29, inclusive, in block 54 all in Belmont tract City of Pensacola.

Lots 18 to 21, inclusive, in block 80, and lots 6 to 20, inclusive, in block 81, in the West King tract, Belmont numbering, City of Pensacola. Lots 15 to 29, inclusive, in block 121, lots one to 5, inclusive, in block 123, lots 24 to 28, inclusive, in block 124, lots 11 to 23, inclusive, in block 125, lots 1 to 6 and 24 to

351 38, in block 145, all in the East King tract, City of Pensacola.

Fractional lot 21, in block 98, fractional lots 15 to 24, in block 100, lots 6 to 14, in block 111, lots 6 to 10, in block 115, lots 21 to 25, in block 134, fractional block 126, lots 1 to 5, in block 136, lots 20 to 22, in block 144, lots 17 to 22, in block 146, lots 6 to 10, in block 148, N 1-2 of block 149, all of block 151, N. 1-2 of block 152, and lots 6 to 18, in block 60, all in the East King tract, Belmont numbering, City of Pensacola.

Lots 8 to 14, 7, 15 and 18, in block 42, lots 1 to 10, in block 60, lots 1 to 8 and 11, in block 66, and lots 1 and 2, in block 67, Belmont tract, City of Pensacola.

Lots 11, 12, 23 and 24, in block 11, lots 11, 12, 19 and 23 and 24, in block 18, E. 1-2 of block 166, lots 13 to 17, in block 223, S. W. 1-4 of block 77, lots 1 to 8 and 15 to 22, in block 11, all of blocks 88, 91, 113, 172, 193, 210 and 217, in the West King tract, City of Pensacola.

Lot 8, in block 5, lots 15 and W. 1-2 of 14, of block 12, lots 1, 2 and W. 1-2 of 3 in block south of block 34, lot 7, in block 36, lots 11 to 15, in block 124, lots 9 to 15, in block 137, lots 9 to 12, in block 144, lots 1, 2 and 9 to 15, in block 147, lots 1 to 5, in block 148, lots 16 to 20, in block 154, lots 6 to 15, in block 160, lots 11 to 20, in block 161, lots 6 to 10, in block 224, and lots 11 to 14, in block 237, all in the new city tract, City of Pensacola.

Also, all right, title and interest of said Walter Tate in the water front of the City of Pensacola, Florida, commonly known as the Pintado grant. All the foregoing property being in Escambia County, State of Florida.

Together with the tenaments, hereditaments, thereunto belonging, or in anywise appertaining.

In witness whereof, I have hereunto set my hand and seal, this 17th day of Dec., A. D. 1896.

[SEAL] A. A. FISHER,
Special Master.

Signed, sealed and delivered in presence of:
LEE DANIELL,
GEO. C. CRAVEY.

STATE OF FLORIDA,
Escambia County.

Before the subscriber, personally appeared A. A. Fisher, known to me to be the individual described, and acknowledged that he executed the foregoing instrument for the uses and purposes herein set forth.

352 Given under my hand and official seal, this 17th day of Dec.

LEE DANIELL,
Notary Public.

Exhibit 42.

Offered by Defendants.

PETER KNOWLES
to
WM. FISHER.

Warranty Deed.

STATE OF FLORIDA,
Escambia County.

Know all men by these presents, that I, Peter Knowles, a widower, for and in consideration of the sum of five hundred and seventy-five ($575.00) dollars, to me in hand paid by William Fisher, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell and convey unto the said William Fisher, his heirs and assigns, forever, the following described real estate, situate, lying and being in the City of Pensacola, County of Escambia, State of Florida, to-wit: lots ten (10), in block thirty-five (35), lots one (1) and two (2), in block thirty-four (34), lots six (6), seven (7), eight (8) and nine (9), in block (20), New City, according to plan of Lee and Harding, together with the improvements thereon, and the hereditaments and appurtenances thereunto belonging or in anywise appertaining; to have and to hold the said above described premises unto the said William Fisher, his heirs and assigns, forever, free from all exemption or homestead right or claim of I, the said grantor, if any such right or claim I possess. And I, the said grantor, for myself and my heirs, do covenant with the said grantee, his heirs and assigns, the same, that it is free from all lien or incumbrance in law or equity, and that said grantor shall and will warrant, and by these presents forever defend the said premises unto the said grantee, his heirs and assigns, against the lawful claims of all and every person or persons whosoever.

In testimony whereof, I have hereunto set my hand and seal, this 27th day of March, 1897.

(Signed) PETER KNOWLES.

Signed, sealed and delivered in the presence of:
(Signed) J. W. HYER,
(Signed) W. C. HOOTON.

STATE OF FLORIDA,
Escambia County.

This day, before the undersigned, personally appeared
353 Peter Knowles, to me well known to be the individual described in and who executed the foregoing deed of conveyance, and acknowledged that he executed the same for the uses and purposes therein expressed.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this 27th day of March, A. D. 1897.

(Signed) J. WHITING HYER,
Notary Public.

STATE OF FLORIDA,
County of .....

On this 30 day of March, 1897, at 12 o'clock M., this instrument was filed for record, and the same being properly authenticated, I have duly recorded the same, on pages 414 and 415 of book 17, in the public records of said county.

In witness whereof, I have hereunto set my hand and affixed my seal of the Circuit Court of the First Judicial Circuit of said State, in and for said County.

(Signed) A. M. McMILLAN, *Clerk,*
By L. M. BROOKS, *D. C.*

Exhibit 43.

Offered by Defendants.

WM. H. KNOWLES
to Deed.
WM. FISHER.

STATE OF FLORIDA,
Escambia County.

Know all men by these presents, That we, William H. Knowles and Mary E. Knowles, husband and wife, for and in consideration of the sum of sixty ($60.00) dollars, to us in hand paid by William Fisher, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell and convey unto the said William Fisher, his heirs and assigns, forever, the following described real estate, situate, lying and being in the City of Pensacola, County of Escambia, State of Florida, to-wit: lots six (6) and seven (7), in block thirty-five (35), of the New City of Pensacola, according to the plan of Lee & Harding. Together with the improvements thereon, and the hereditaments

and appurtenances thereunto belonging or in anywise appertaining; to have and to hold the said above described premises unto the said William Fisher, his heirs and assigns, forever, free from all exemption or homestead right or claim of us, the said grantors, if any such right or claim we possess.

354 In testimony whereof, we have hereunto set our hands and seals, this 2nd day of May A. D. 1900.

(Signed) WM. H. KNOWLES, [L. S.]
(Signed) MARY E. KNOWLES. [L. S.]

Signed, sealed and delivered in the presence of:
(Signed) J. W. HYER,
(Signed) MARIAN K. SUTER.

STATE OF FLORIDA,
Escambia County.

This day, before the undersigned, personally appeared William H. Knowles and Mary E. Knowles, his wife, to me well known to be the individuals described in and who executed the foregoing deed of conveyance, and acknowledged that they executed the same for the uses and purposes therein expressed.

And the said Mary E. Knowles, wife of the said William H. Knowles, upon a private examination by me held, separate and apart from her husband, acknowledged and declared that she executed the same freely and voluntarily, and without fear of apprehension, compulsion or constraint, of or from her husband, and for the purposes of relinquishing, renouncing and conveying all her rights of whatever kind, in and to the said property.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this 2nd day of May, A. D. 1900.

(Signed) J. WHITING HYER,
Notary Public.

STATE OF FLORIDA,
County of Escambia.

On this 3rd day of May, 1900, at 12 o'clock P. M., this instrument was filed for record, and the same being duly authenticated, I have duly recorded the same on page 167 of book No. 23 of deeds in the public records of said county.

In witness whereof, I have hereunto set my hand and affixed the seal of the Circuit Court of the First Judicial Circuit of said State, in and for said County.

(Signed) A. M. McMILLAN, *Clerk*,
By B. H. BURTON, *D. C.*

Exhibit 44.

Offered by Defendants.

E. C. Benedict to Wm. Fisher.

STATE OF CONNECTICUT,
Fairfield County.

355 Know all men by these presents: That we, E. C. Benedict and Sarah H. Benedict, his wife, for and in consideration of eighty dollars, the receipt whereof is hereby acknowledged, do bargain, sell, convey and grant unto William Fisher and his heirs, executors, administrators and assigns, forever, the following described property, to-wit:

Lot (one) (1) in block 35 (thirty-five) in New City Tract, in the City of Pensacola, County of Escambia, State of Florida.

Together with all and singular the tenements, hereditaments and appurtenances thereto belonging or anywise appertaining, free from all exemptions and right of homestead.

In witness whereof we have hereunto set our hands and seals this twelfth day of June, A. D. 1897.

(Signed) E. C. BENEDICT, [L. S.]
(Signed) SARAH H. BENEDICT. [L. S.]

Signed, sealed and delivered in the presence of:
(Signed) WILLIAM PRATT,
(Signed) GEO. G. McNALL.

STATE OF CONNECTICUT,
Fairfield County.

Before the subscriber personally [appeared] E. C. Benedict and Sarah H. Benedict his wife, known to me to be the individuals described, and acknowledged that they executed the foregoing instrument for the uses and purposes therein set forth, and the said Sarah H. Benedict, wife of the said E. C. Benedict, on a private examination by me, held separate and apart from her husband, acknowledged and declared that she executed the same freely and voluntarily, and without fear, apprehension, compulsion or constraint of or from her husband, and ofr [for] the purpose of renouncing, relinquishing and conveying all her right of whatsoever kind in and to the said property.

Given under my hand and official seal this twelfth day of June, 1897.

(Signed) GEO. G. McNALL,
Notary Public.

Residing at Greenwich, Conn.

STATE OF CONNECTICUT,
County of Fairfield,
County Clerk's office.

I, William R. Shelton, clerk of said county, and of the Superior Court, in and for said county, the same being a Court of Record, hereby certify that Geo. G. McNall was, at the date of the certificate of proff [proof], or acknowledgement of the annexed instrument, a notary public, within and for said county, duly appointed, commissioned and sworn, and authorized by the laws of said state to administer oaths and
356 take the acknowledgement of deeds and other instruments and to certify the same; that I am well acquainted with his handwriting, and verily believe that the signature to the instrument hereto annexed is genuine; and that said instrument is executed and acknowledged in conformity with the laws of this state.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court of Bridgeport, in said county and state, on the 16th day of June, 1897.

(Signed) WM. R. SHEEHN, *Clerk.*

Received this 16th day of July, 1897, at 10 o'clock a. m., and recorded in Book 18 of deeds at page 12 July 17th, 1897.

(Signed) A. M. McMILLAN, *Clerk.*
(Signed) By L. M. BROOKS, *D. C.*

Exhibit 45.

Offered by Defendants.

PETER KNOWLES
to
WM. FISHER.

Deed.

STATE OF FLORIDA,
Escambia County.

Know all men by these presents, that I, Peter Knowles, a widower, for and in consideration of the sum of three hundred (300.00) dollars, to me in hand paid by William Fisher, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell and convey unto the said William Fisher, his heirs and assigns forever, the following described real estate, situate, lying and being in the City of Pensacola, County of Escambia, State of Florida, to-wit: Lots one (1) and three (3) to seven (7) inclusive

in block fifty-one (51), and lots three (3) and four (4) in block thirty-four (34), and lots seven (7), eight (8) and nine (9) and ten (10) in block thirty-three (33), all in New City of Pensacola, according to plan of Lee & Harding. Together with the improvements thereon, and the hereditaments and appurtenances thereunto belonging or in anywise appertaining: To have and to hold the said above described premises unot [unto] the said William Fisher, his heirs and assigns, forever, free from all exemption or homestead right or claim of me, the said grantor, if any such right or claim P [I] possess.

In witness whereof, I have hereunto set my hand and seal this 18th day of May, A. D. 1897.

(Signed) PETER KNOWLES. [L. S.]

357 Signed, sealed and delivered in the presence of:

(Signed) MARY E. KNOWLES,

(Signed) WM. H. KNOWLES.

STATE OF FLORIDA,
Escambia County.

This day, before the undersigned, personally appeared Peter Knowles, a widower, to me well known to be the individual described herein and who executed the foregoing deed of conveyance, and acknowledged that he executed the same for the uses and purposes therein expressed.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this 18th day of May, A. D. 1897.

(Signed) WM. H. KNOWLES,
Notary Public.

By mistake the consideration stated in this deed should have been $450.00 instead of $300.00 and Wm. Fisher has to-day paid the additional $150.00.

(Signed) WM. H. KNOWLES,
Agent for Peter Knowles.

May 22 | 97.

STATE OF FLORIDA,
County of Escambia.

On this 19 day of May, at 10 o'clock a. m., this instrument was filed for record, and the same being properly authenticated, I have duly recorded the same on pages 525, 6, of book 17 in the public records of said county.

In witness whereof, I have hereunto set my hand and affixed the seal of the Circuit Court of the 1st Judicial Circuit of said state, in and for said county.

(Signed) A. M. McMILLAN, *Clerk,*
By L. M. BROOKS, *D. C.*

"Exhibit 46."

Offered by Defendants.

Warranty Deed. Sterrett Tate and wife to William Fisher.

STATE OF FLORIDA,
Escambia County.

Know all men by these presents, that we, Sterrett Tate and Gay C. Tate, his wife, for and in consideration of the sum of five hundred and fifteen ($515.00) dollars, to us in hand paid by Wm. Fisher, the receipt whereof is hereby acknowledged, and have granted, bargained and sold and by these presents do grant, bargain, sell and convey unto the said Wm. Fisher, his heirs and assigns forever, the following described real estate, situate, lying and being in the City of Pensacola, County of Escambia, State of Florida, to-wit:

358 Lots one (1) to five (5), both inclusive, in block thirty-two (32) of the New City tract by the plan and survey of Lee & Harding. Together with the improvements thereon, and the hereditaments and appurtenances thereunto belonging or in anywise appertaining. To have and to hold the said above described premises unto the said Wm. Fisher, his heirs and assigns forever, free from all exemption or homestead right or claim of us, the said grantors, if any such right or claim we possess. And we, the said grantor [grantors], for ourselves and our heirs do covenant with the said grantee, his heirs and assigns, that we are well seized of the said property, and have a good right to convey the same; that it is free from any lien or incumbrance in law or equity, and that said grantor shall and will warrant, and by these presents forever defend the said premises unto the said grantee, his heirs and assigns, against the lawful claims of all and every person or persons whomsoever.

In testimony whereof, we have hereunto set our hands and seal this 3rd day of Jany., 1898.

(Signed) STERRETT TATE, [L. S.]
(Signed) GAY C. TATE. [L. S.]

Signed, sealed and delivered in the presence of:
(Signed) WALTER TATE,
(Signed) LOUIS E. THOMPSON.

STATE OF FLORIDA,
Escambia County.

This day, before the undersigned, personally appeared Sterrett Tate and Gay C. Tate, to me well known to be the individual [individuals] described in and who executed the foregoing deed of conveyance, and acknowledged that they executed the same for the uses and purposes therein expressed, and the said Gay C. Tate, wife of the said Sterrett Tate, upon a private examination by me held, separate and apart from her said husband, acknowledged and declared that she executed the same freely and voluntarily, and without fear or apprehension, compulsion or constraint, of or from her said husband, and for the purpose of relinquishing, renouncing and conveying all her rights of whatever kind in and to the said property.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this 4th day of Jany., A. D. 1898.

(Signed) LOUIS E. THOMPSON,
Notary Public, State at Large.

359 STATE OF FLORIDA,
County of .....

On this 6th day of Jan., at 11 o'clock a. m., this instrument was filed for record, and the same being properly authenticated, I have duly recorded the same on pages 588-590 of book 18 in the public records of said county.

In witness whereof, I have hereunto set my hand and affixed the seal of the Circuit Court of the First Judicial Circuit of said state, in and for said county.

(Signed) A. M. McMILLAM,
By L. M. BROOKS, *D. C.*

STATE OF FLORIDA,
County of Escambia.

On this 18 day of Jany., A. D. 1900, at 6 o'clock p. m., this instrument was filed for record, and the same being properly authenticated, I have duly recorded the same on pages 753 of book 19 in the public records of said county.

In witness whereof, I have hereunto set my hand and affixed my seal of the Circuit Court of the First Judicial Circuit of said state, in and for said county.

(Signed) A. M. McMILLAN, *Clerk,*
By B. H. BURTON, *D. C.*

Exhibit 47.

Offered by Defendants.

MRS. C. ARCHIE SIMMONS
to
WILLIAM FISHER.

Warranty Deed.

STATE OF FLORIDA,
.....*County.*

Know all men by these presents, that we, Mrs. C. Archie Simmons, nee Yonge, and Frank K. Simmons, her husband, for and in consideration of the sum of two hundred (-200) dollars, to us in hand paid by William Fisher, have granted, bargained, and sold and by these presents do grant, bargain, sell and convey unto the said William Fisher, his heirs and assigns forever, the following described real estate, situate, lying and being in the City of Pensacola, County of Escambia, State of Florida, to-wit: Lots (2) and three (3) in block thirty-five (35), New City of Pensacola, according to map of the City of Pensacola, published by Thos. C. Watson. Together with the improvements thereon, and the hereditaments and the appurtenances thereunto belonging or in anywise appertaining; to have and to hold the said above described premises unto the
360 said William Fisher and his heirs and assigns forever, free from all exemption or homestead right or claim of said grantors, if any such right or claim we possess. And we, the said grantors, for ourselves and our heirs, do covenant with the said grantee his heirs and assigns, that we are well seized of the property, and have a good right to convey the same; that it is free from all lein [lien] or incumbrance in law or equity, and the said grantor shall and will warrant, and by these presents forever defend the said premises unto the said grantee, his heirs and assigns, against the lawful claims of all and every person or persons whomsoever.

In testimony whereof, we have hereunto set our hands and seals, this 11th day of January, A. D. 1900.

(Signed) FRANK K. SIMMONS, [L. S.]
(Signed) C. ARCHIE SIMMONS. [L. S.]

Signed, sealed and delivered in the presence of:
(Signed) JULIUS C. YONGE,
(Signed) P. K. YONGE.

STATE OF NEW JERSEY,
Essex County.

This day, before the undersigned, personally appeared Mrs. C. Archie Simmons (nee Yonge) and Frank K. Simmons, to me well known to be the individuals described in and who executed the foregoing deed of conveyance, and acknowledged that they executed the same for the uses and purposes therein expressed, and the said Mrs. C. Archie Simmons upon a private examination held by me, separate and apart from her said husband, acknowledged and declared that she executed the same freely and voluntarily, and without fear or apprehension, compulsion or constraint of or from her said husband, and for the purpose of relinquishing, renouncing and conveying all her rights, of whatever kind, in and to the said property.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this 11th day of January, A. D. 1900.

(Signed) JOHN MANCINI,
Notary Public.

Exhibit "48."

Offered by Defendants.

PETER KNOWLES
to
WILLIAM FISHER.

Deed.

STATE OF FLORIDA,
Escambia County.

Know all men by these presents, that I, Peter Knowles,
361 a widower, for and in consideration of the sum of five hundred ($500.00) dollars, to me in hand paid by William Fisher the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell and convey unto the said William Fisher his heirs and assigns forever, the following described real estate, situate, lying and being in the City of Pensacola, County of Escambia, State of Florida, to-wit: Lots one (1), two (2), and three (3), in block (21), lots one (1) and west ten feet (10) of lot two(2) in block thirty-six (36), lots five (5) and nine (9) in block thirty-five (35) lots four (4), five (5), and six (6) in block (50) and all interest in block No. thirty-five and one-half (35½), lying south of block thirty-five (35) and in the New City of Pensacola, according to plan of Lee & Harding. Together with the improvements thereon, and the hereditaments, and appur-

tenances thereunto belonging or in anywise appertaining: To have and to hold the said above described premises unto the said William Fisher his heirs and assigns forever, free from all exemption or homestead right or claim or I the said grantor if any such right or claim I possess.

In testimony whereof, I have hereunto set my hand and seal this 21st day of May, A. D. 1897.

(Signed) PETER KNOWLES. [L. S.]

Signed, sealed and delivered in the presence of:
(Signed) WM. H. KNOWLES,
" MAUD SUTER.

STATE OF FLORIDA,
Escambia County.

This day, before the undersigned, personally appeared Peter Knowles a widower to me well known to be the individual described in and who executed the foregoing deed of conveyance, and acknowledged that he executed the same for the uses and purposes therein expressed.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this 21st day of May, A. D. 1897.

(Signed) WM. H. KNOWLES,
Notary Public.

STATE OF FLORIDA,
County of Escambia.

On this 22 day of May, 1897, at 5 o'clock p. m. this instrument was filed for record and the same being properly authenticated I have duly recorded the same, on pages 538 and 9 of book 17 in the public records of said county.

In witness whereof, I have hereunto set my hand and
362 affixed the seal of the Circuit Court of the 1st Judicial Circuit of said State, in and for the said County.

(Signed) A. M. McMILLAN, *Clerk,*
By L. M. BROOKS, *D. C.*

Exhibit "49."

Offered by Defendants.

P. K. YOUNG and wife
to
WILLIAM FISHER.

Warranty Deed.

STATE OF FLORIDA,
Escambia County.

Know all men by these presents, that we, P. K. Yonge and Lucie C. Yonge, his wife for and in consideration of the sum of five hundred 00 | 100 ($500 00 | 100) dollars, to us in hand paid by William Fisher the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell and convey unto the said heirs and assigns forever, the following described real estate, situate, lying and being in the City of Pensacola, County of Escambia, State of Florida, to-wit:

Block one hundred and fifteen (115), New City of Pensacola according to plan of Lee & Harding. Together with the improvements thereon, and the hereditaments and appurtenances thereunto belonging or in anywise appertaining: To have and to hold the said above described premises unto the said heirs and assigns forever, free from all exemption or homestead right or claim of us the said grantors, for ourselves and our heirs or claim of us the said grantors if any such right of claim we possess: And we the said grantors, for ourselves and our heirs, do covenant with the said grantee, heirs and assigns, that said real estate is free from all lien or incumbrance in law or equity, and the said grantor shall and will warrant, and by these presents forever defend the said premises unto the said grantee, heirs and assigns, against the claims of all and every person or persons whomsoever.

In testimony whereof, we have hereunto set our hands and seals this 26th day of July, A. D. 1888.

(Signed) P. K. YONGE,
" L. C. YONGE.

Signed, sealed and delivered in the presence of:
(Signed) CHARLES J. MACLEAN,

As to signature of P. K. Yonge.
363 As to signature of—Yonge.
(Signed) W. W. RICHARDS.
(Signed) M. ROOKER.

STATE OF ALABAMA,
Mobile County.

This day, before the undersigned, personally appeared Lucile C. Yonge wife of P. K. Yonge of Pensacola, Florida to me well known to be the individual described in and who executed the foregoing deed of conveyance, and acknowledged that she executed the same for the uses and purposes therein expressed.

And the said Lucie C. Yonge wife of the said P. K. Yonge upon a private examination by me held, separate and apart from her said husband, acknowledged and declared that she executed the same freely and voluntarily, and without fear of apprehension, compulsion or constraint, of or from her said husband and for the purpose of relinquishing her dower and removing and conveying all her right of whatsoever kind in and to the property therein described.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 26th day of July, A. D. 1888.

(Signed) W. J. PECKHAM, *J. P. M. C.*

STATE OF FLORIDA,
Escambia County.

This day before the undersigned, personally appeared P. K. Yonge, to me well known to be the person described in and who executed the foregoing deed of conveyance, and acknowledged that he executed the same for the uses and purposes therein expressed.

In witness whereof, I have hereunto set my hand and affixed my official seal this 13th day of August, A. D. 1888.

(Signed) CHARLES J. MACLEAN,
Notary Public.

STATE OF FLORIDA,
Escambia County.

On this 25th day of July at 5 o'clock, p. m., this instrument was filed for record, and the same being properly authenticated, I have duly recorded same on pages 153 of book of deed 22 in the public records of said County.

In witness whereof, I have hereunto set my hand and affixed the seal of the Circuit Court of the Judicial Circuit of said State, in and for said County.

(Signed) A. M. McMILLAN, *Clerk,*
By N. C. McMILLAN.

Exhibit "50."

Offered by Defendants.

W. A. BLOUNT.
to
WILLIAM FISHER.

Warranty Deed.

STATE OF FLORIDA,
Escambia County.

Know all men by these presents, that we, William A. Blount and Cora M. Blount, his wife, for and in consideration of two hundred and fifty dollars ($250.00), the receipt whereof is hereby acknowledged, do bargain, sell, convey and grant unto William Fisher, his heirs, executors, administrators and assigns forever, the following described property to-wit: Lot four (4) in block thirty-five (35) and lot six (6) in block thirty-six (36) in New City of Pensacola, County of Escambia, State of Florida, according to map of the City of Pensacola published by Thos. C. Watson. Together with all and singular, the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, free from all exemptions and right of homestead.

And we covenant that we are seized of an infeasible estate in fee simple in the said property and have a good right to convey the same; that it is free from all incumbrances, and that we, our heirs, executors and administrators, the said grantee, his heirs, executors, administrators and assigns, in the quiet and peaceable possession and enjoyment thereof, against all persons lawfully claiming the same, shall and will forever warrant and defend.

In witness whereof, we have hereunto set our hands and seals this 12th day of July, A. D. 1900.

(Signed) W. A. BLOUNT, [L. S.]
(Signed) CORA M. BLOUNT. [L. S.]

Signed, sealed and delivered in the presence of:
(Signed) JOS. E. MAURA, Jr.,
(Signed) E. H. ROSENSTEIN.

STATE OF FLORIDA,
County of Escambia.

Before the subscriber personally appeared Wm. A. Blount and Cora M. Blount known to me to be the individuals described

and acknowledged that they executed the foregoing instrument for the uses and purposes therein set forth, and the said Cora M. Blount, wife of the said Wm. A. Blount, on a private
365 examination by me, held separate and apart from her husband, acknowledged and declared that she executed the same freely and voluntarily, and without fear, apprehension, compulsion or constraint of or from her husband, and for the purpose of renouncing, relinquishing and conveying all her right of whatsoever kind in and to the said property.

Given under my hand and official seal this 13th day of July, 1900.

(Signed) E. H. ROSENSTEIN,
Notary Public.

Received this 6 day of August, A. D. 1900, at 2 o'clock p. m., and recorded in volume 24, page 495, the 6 day of Aug., 1900.

(Signed) A. M. McMILLAN,
Clerk Circuit Court.
By B. H. BURTON, *D. C.*

"Exhibit 51."

Offered by Defendants.

F. A. BOOTH
to
WM. FISHER.

Deed of Realty.

STATE OF NEW YORK,
New York County.

Know all men by these presents, that we, Frederick A. Booth and May B. W. Booth, his wife, for and in consideration of eight hundred and fifty ($850.00) dollars, the receipt whereof is hereby acknowledged, do bargain, sell, convey and grant unto William Fisher and his heirs, executors and administrators and assigns, forever, the following described property, to-wit: all of block one hundred and forty-six (146), in the New City Tract in the City of Pensacola, Escambia County, State of Florida, by the plan and survey of said tract by Lee & Harding. Together with all and singular, the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, free from all exemptions and right of homestead.

In witness whereof, we have hereunto set our hands and seals this 23rd day of Dec., A. D. 1890.

(Signed) FRANK A. BOOTH, [L. S.]
(Signed) MARY B. W. BOOTH. [L. S.]

Signed, sealed and delivered in the presence of:

(Signed) EUGINE DELMAR,
(Signed) O. C. SAURRES.

STATE OF NEW YORK,
New York County.

366 Before the subscriber, personally appeared Frederick A. Booth and Mary B. W. Booth, his wife, known to me to be the individuals described, and acknowledged that they executed the foregoing instrument for the uses and purposes therein set forth, and the said Mary B. W. Booth, wife of the said Frederick A. Booth, on a private examination held by me, held separate and apart from her husband, acknowledged and declared that she executed the same freely and voluntarily, and without fear, apprehension, compulsion or constraint of or from her husband, and for the purpose of renouncing, relinquishing and conveying all her right of whatsoever kind in and to the said property.

Given under my hand and official seal, this 24th day of Dec., 1890.

(Signed) EUGENE DELMAR,
Notary Public.

STATE OF NEW YORK,
City and County of New York, ss.

I, Edward F. Reilly, Clerk of the City and County of New York, and also Clerk of the Supreme Court, that Eugene Delmar, whose name is subscribed to the certificate of the proof of acknowledgment of the an-exed instrument, and thereon written, was, at the time of taking such proof or acklowledgment, a notary public in and for the City and County of New York, dwelling in the said city, commissioned and sworn, and duly authorized to take the same. And further, that I am well acquainted with the handwriting of said notary, and verily believe that the signature to the said certificate of proof or acknowledgement is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 24 day of Dec., 1899.

(Signed) P. JOSEPH REILLY, *Clerk.*

Received this 6th day of Feb., A. D. 1891, at .. o'clock .. M., and recorded in volume "9," page 522, the 7th day of Feb., 1891.

(Signed) F. E. DE LA RUA,
Clerk Circuit Court,
Per JOHN DE LA RUA.

367 *Exhibit* 52.

Offered by Defendants.

CHAS. J. MACLEAN
to
WM. FISHER.

Warranty Deed.

STATE OF FLORIDA,
Escambia County.

Know all men by these presents, that I, Charles J. Maclean, for and in consideration of the sum of five hundred ($500) dollars, to me in hand paid by William Fisher, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell and convey unto the said William Fisher, his heirs and assigns, forever, the following described real estate, situate, lying and being in the City of Pensacola, County of Escambia, State of Florida, to-wit: lots seventeen (17) to twenty (20), inclusive, block ninety-two (92). Lots fourteen (14), fifteen (15) and sixteen (16), block sixty-eight (68), and lots seven (7), eight (8), nine (9) and ten (10), block forty-eight (48), New City Tract. Together with the improvements thereon, and the hereditaments and appurtenances thereunto belonging or in anywise appertaining; to have and to hold the said above described premises unto the said William Fisher, his heirs and assigns, forever, free from all exemption or homestead right or claim of me, the said grantor if any such right or claim I possess. And the said grantor, for myself and my heirs, do covenant with the said grantee, his heirs and assigns, that the said real estate is free from any lien or incumbrance in law or equity, and the said grantor shall and will warrant, and by these presents forever defend the said premises unto the said grantee, his heirs and assigns, against the claims of all and every person whomsoever.

In testimony whereof, I have hereunto set my hand and seal, this 27th day of August, A. D. 1891.

(Signed) CHARLES J. MACLEAN. [L. S.]

Signed, sealed and delivered in the presence of:
(Signed) EDWARD MASSEY,
(Signed) JOHN DE LA RUA.

STATE OF FLORIDA,
Escambia County.

Before the undersigned, a notary public in and for said State of Florida at Large, personally appeared John de la Rua, who, being duly sworn, deposes and says that Charles J.
368 Maclean, the within named grantor, executed the foregoing conveyance in his presence, and in the presence of the other subscribing witness, on the day the same bears date, and that he and the said Edward Massey, the other subscribing witness thereupon subscribed their names as subscribing witnesses thereto, upon said date.

In testimony whereof, I have hereunto set my hand and official seal, this 14th day of August, 1899.

(Signed) JNO. DE LA RUA.
(Signed) D. HALE WILSON,
Notary Public, State of Florida at Large.

STATE OF FLORIDA,
County of Escambia.

On this 15th day of August, 1899, at 1:25 o'clock P. M., this instrument was filed for record, and the same being properly authenticated, I have duly recorded the same on pages 224-6 of book No. 22 of deeds, in the public records of said county.

In witness whereof, I have hereunto set my hand and affixed the seal of the Circuit Court of the First Judicial Circuit of said State in and for said County.

(Signed) A. M. McMILLAN, *Clerk*,
By B. H. BURTON, *D. C.*

Exhibit 53.

Offered by Defendants.

LOLA TATE
to
WM. FISHER.

Warranty Deed.

STATE OF FLORIDA,
Escambia County.

Know all men by these presents, that I, Lola Tate, for and in consideration of one hundred and twelve 50-100 ($112.50) dollars, the receipt whereof is hereby acknowledged, do bargain, sell, convey and grant unto William Fisher and his heirs,

executors, administrators and assigns, forever, the following described property, to-wit: Lot ten and the east half of lot nine (10 & E. 1-2 9), in block fifty-one of the New City Tract, by the plan thereof by Lee & Harding, all lying and being situated in the City of Pensacola. Together with all and singular, the tenements, hereditaments and appurtenances belonging or anywise appertaining, free from all exemptions and rights of homestead.

369 And I covenant that I am well seized of the said property, and have a good right to convey the same; that it is free of incumbrance and that I, my heirs, executors and administrators, the said grantee, and his heirs, executors, administrators and assigns, in the quiet and peac-able possession and enjoyment thereof, against all persons lawfully claiming the same, shall and will forever warrant and defend.

In witness whereof, I have hereunto set my hand and seal, this 14th day of June, A. D. 1897.

(Signed) LOLA TATE. [L. S.]

Signed, sealed and delivered in the presence of:

(Signed) J. M. TOLER,
(Signed) WALTER TATE.

STATE OF FLORIDA,
County of Escambia.

Before the subscriber, personally appeared Lola Tate, known to me to be the individual described, and acknowledged that she executed the foregoing instrument for the uses and purposes therein set forth.

Given under my hand and official seal, this 14th day of June, A. D. 1897.

(Signed) JOHN M. TOLER,
Notary Public, State of Florida at Large.

Received this 17th day of June, A. D. 1897, at 11 1-2 o'clock A. M., and recorded in volume 17, page 594, the 17 day of June, 1897.

(Signed) A. M. McMILLAN,
Clerk Circuit Court, Escambia County, Fla.,
By L. M. BROOKS, *D. C.*

"Exhibit 57."

Offered by Defendants.

JNO. W. FRATER
to
WM. FISHER.

Warranty Deed.

STATE OF FLORIDA,
Escambia County.

Know all men by these presents, that we, Jno. W. Frater, and ..... Frater, his wife, for and in consideration of the sum of four hundred and fifty ($450.00) dollars, to us in hand paid by William Fisher, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell and convey unto the said William Fisher, his heirs and assigns, forever, the following de-
370 scribed real estate, situate, lying and being in the City of Pensocala, County of Escambia, State of Florida, to-wit: Lots number one (1), two (2), three (3), four (4) and five (5) in square three hundred and eighteen (318), according to and in the plan of the New City of Pensacola, surveyed by George E. Chase, in the year 1835 and 1836, being the same premises which W. B. Taylor, Atty. for Wm. H. Chase, trustee of Pensacola Land Company, did grant and convey unto Morris Robinson, Charles A. Davis and Samuel Jordan, trustee of Pensacola City Company, their successors and assigns, and being premises conveyed by said Robinson, Davis and Jaudon to Henry Ahrens, for above said Chas. Ahrens, in trust by will, said above described property being embraced in deed to Jno. W. Frater and recorded in book 11 at page 574. Together with the improvements thereon, and the hereditaments and appurtenances hereunto belonging or in anywise appertaining; to have and to hold the said above described premises unto the said William Fisher, his heirs and assigns, forever, free from all exemption or homestead right or claim of we, the said grantors, if any such right or claim we possess. And we, the said grantors, for ourselves and our heirs, do covenant with the said grantee, his heirs and assigns, that we are well seized of the said property, and have a good right to convey the same; that it is free from all lien or incumbrance in law or equity, and that *shall* grantor shall and will warrant, and by these presents forever defend the said premises unto the said gran-

tee, his heirs and assigns, against the lawful claims of all and every person or persons whomsoever.

In testimony whereof we have hereunto set our hands and seals, this 7th day of July, 1897.

(Signed) J. W. FRATER, [L. S.]
(Signed) I. W. FRATER. [L. S.]

Signed, sealed and delivered in the presence of:

(Signed) LIZZIE W. FRATER, As to L. W. Frater,
(Signed) WM. G. BUSH,
(Signed) BEN H. LIDDON, As to J. W. Frater,
(Signed) LESLIE E. BROOKS, As to L. W. Frater.

STATE OF FLORIDA,
Escambia County.

This day, before the undersigned, personally appeared Jno. W. Frater and .... Frater, his wife, to me well known to be the individuals described in and who executed the foregoing deed of conveyance, and acknowledged that they ex-
371 ecuted the same for the uses and purposes therein expressed, and the said .... Frater, wife of the said Jno. W. Frater, upon a private examination by me held, separate and apart from her husband, acknowledged and declared that she executed the same freely and voluntarily, and without fear or apprehension, complsion or constraint, of or from her said husband, and for the purpose of relinquishing, renouncing and conveying all her rights, of whatsoever kind, in and to the said property.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this 7th day of July, A. D. 1897.

(Signed) LESLIE E. BROOKS,
Notary Public, State at Large.

STATE OF FLORIDA,
County of Escambia.

On this 10th day of July, 1897, at 6 o'clock P. M., this instrument was filed for record, and the same being properly authenticated, I have duly recorded the same, on pages 638, 639 and 640 of book 17, in the public records of said county.

In witness whereof, I have hereunto set my hand and affixed the seal of the Circuit Court of the First Judicial Circuit of said state, in and for said county.

(Signed) ANGUS M. McMILLAN, *Clerk.*

Offered by Defendants: "Exhibit 58."

JNO. Q. LOVELET and FLORIDA MCGUIRE
to
JAMES WILKINS and W. B. RUNYAN.

This indenture made the seventeenth day of January, in the year one thousand eight hundred and eighty-seven, between John Q. Lavalette and Florida McGuire of the first part, and James Wilkins and Wm. B. Runyan of the second part; witnesseth, that the said parties of the first part, in consideration of the sum of twenty dollars to them duly paid before the delivery hereof, have remised, released and quit claimed to the said parties of the second part, their heirs and assigns forever, all that portion of land lying and being east of the City of Pensacola, known as the Rivas tract, and all their right, title and interest to the said described land with the ripe in rights thereunto belonging with the appurtenances and add the estate, right, title and interest therein of the said party of the first therein, to have and to hold the above mentioned and described premises with the appurtenances unto the said parties
372 of the second part, their heirs and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seal, the day and year first above written.

(Signed) JOHN G. LAVALETTE, [SEAL]
(Signed) FLORIDA McGUIRE. [SEAL]

Sealed and delivered in the presence of:

(Signed) ANNA MAURA, [SEAL]
(Signed) JOHN MAURA, [SEAL]
(Signed) FRANK MAURA, [SEAL]
(Signed) WESLEY W. McGUIRE. [SEAL]

STATE OF FLORIDA,
County of Escambia.

On the 15th day of January, A. D. 1887, before me personally came John Q. Lavalette to me known and known to me to be the individual described in and who executed the foregoing instrument in my presence.

(Signed) FRANK MAURA,
Notary Public.

Defendants produce one JOSEPH SIERRO as a witness in their behalf, who being duly sworn testified as follows:

Direct: My name is Joseph C. Sierro, I have lived in Pensacola 69 years, the 19th of this month. I know the location of the Chabeaux tract of land; I know of occupation of that land prior to the Civil War, there was a two story flat roof building on the brow of the hill belonging to O. M. Avery, Mr. Shino lived on the lot, and adjoining the marine hospital all under my father's administration as collector.

The property at that time belonged to Mr. Scarrett, from whom my father rented, I recollect that hospital, I think in 1853-54-55.

Cross Examination.

I am 69 years old on the 19th of this month, I have known the Pensacola City Company 20 or 25 years under that name, I am familiar with what is called the Rivas tract of land. It is a tract of land in the eastern portion of the city; I never knew it by that name until here lately.

Re-Direct.

I knew it by the Texar tract.

Defendants rest.

373 Plaintiffs by their counsel offer deed from William B. Runion heirs to Florida McGuire, which is set out in words and figures as follows:

"Exhibit G."

STATE OF FLORIDA,
Escambia County.

Be it remembered that on this the 1st day of June, 1899, we, the undersigned heirs of William B. Runion, do by these presents sell, alienate and transfer to Florida McGuire, all our rights, titles and interest in and to "her former interest of what is known as the Rivas tract of land, fully described in the act of sale from Florida McGuire to William B. Runyan—our father —on the 17th day of Jan., 1887, and duly recorded in the proper office.

The consideration of this sale is the advanced, and to be advanced by Geo. W. Pryor for the prosecution of suit by Florida McGuire in the United States Circuit Court for the Northern District of Florida, to quiet the titles and secure possession of said entire tract of land.

Signed in good faith at the day and date above written. "The words "her former interest of" in 6" line interlined before signing.

CLARINE H. RUNYAN,
ALBERT H. RUNYAN,
ANNA R. RUNYAN,
MANUEL G. RUNYAN,
AMOS G. RUNYAN,
WM. B. RUNYAN,
Heirs of Wm. Runyan.

Witnesses:
JOS. C. KEYSER,
R. GOLAY.

STATE OF FLORIDA,
Escambia County.

I, A. M. McMillan, Clerk of the Circuit Court in and for said state and county, do hereby certify that the foregoing is a true and correct copy of the original as remains of record in deed book 28, on page 399, of the public records of said county in my office.

In testimony whereof, I have hereunto set my hand, and affixed my seal this 21st day of March, A. D. 1902.

A. M. McMILLAN,
Clerk of the Circuit Court.
By H. H. BURTON, *D. C.*

374 Plaintiffs by their counsel, produce the following witness, ALBERT B. RUNYAN, who being sworn, testified as follows:

I am the son of W. B. Runyan, one of his heirs; I have signed a deed for Mr. W. B. Runyan heirs back to Florida McGuire. I don't know in months and days how long ago it was, it was a long time ago; I don't know if it was before this suit was instituted, it was not during this year, the other heirs signed the deed with me.

Cross Examination.

By MR. BLOUNT:

My brothers at Keysers had the power of attorney to sign and fix it up, he is more familiar with it than I am; I did not get any money for it; I don't know whether he did or not, I think that's all I signed; I think it was to Florida McGuire, it was given to my brother; I don't know who gave it to him, my

brother handed it to me. I think he was there when I signed it, I don't recollect much about it. We were all mixed with the matter so long, I didn't pay much attention to it, all the interest we ever had we have lost. I didn't think it was worth anything and was willing to deed it back to her.

You ought to have a copy of it here somewhere, I think I signed it down at the house.

I think it was witnessed, I don't remember witnesses, I think there [were] two or three members of the family there. My grandmother and my mother I think my mother signed it, I signed it in the summer time. I think it was some time last summer; I have signed two or three deeds; I have only signed one lately.

It strikes me that there was one signed two or three years ago, I did not sign any deeds to George W. Pryor; I did not know that he was connected with it at all; I don't know what paper it was I signed last summer; it was a deed doing away with this property, it was to Florida McGuire.

Plaintiffs close testimony.

Thereupon plaintiffs and defendants, by their counsel announced to the Court that the testimony for the plaintiffs and defendants had closed.

And the said plaintiffs by their counsel did then and there present to the Court their written request to charge, which request is in words and figures as follows:

375 *Plaintiffs' Request to Charge.*

And the said plaintiffs by their counsel, did then and there, in writing, request the said Judge to deliver to the jury then and there sitting the following instructions:

1st. A complete Spanish grant of 1806 was sufficient to invest in the grantee and in his heirs all right and interest in the property granted.

But the said Judge did then and there refuse to give the same to the said jury.

And the said plaintiffs by their counsel did then and there except to said refusal.

And this constitutes plaintiffs 7th exception.

And the said plaintiffs by their counsel did then and there, in writing, request the said Judge to deliver to said jury the following instructions:

2nd. That such a complete grant was perfect and need not be presented to or confirmed by the American commissioners,

and that any ex parte action by which other parties than the grantees obtained and [any] confirmation of this title or acknowledgment of any transfer thereof, unless it be proved that the original grantee or his heirs were represented in such proceeding before the American commissioners, were and are not binding on the heirs of such grantees.

But the said Judge did then and there refuse to give the same to said jury.

And the said plaintiffs by their counsel did then and there except to the refusal of the Court to give said instructions to said jury.

And this constitutes plaintiffs' 8th exception.

And the said plaintiffs by their counsel did then and there request the said Judge to deliver to the said jury the following instructions:

3rd. That Spanish official document purporting to sell this property in Oct. 21st, 1817, must be shown to be the official records from the Spanish archives, and must bear the original certificate of filing, in the office of the proper custodian of records under the Spanish government, and the same must have also been duly recorded or registered in the proper conveyance records under the Spanish government and must bear the proper certificate thereof.

But the said Judge did then and there refuse to give the same to the said jury.

376 And the said plaintiffs by their counsel did then and there except to said refusal.

And this constitutes plaintiffs' 9th exception.

And the said plaintiffs by their counsel did then and there request the said Judge to deliver to the said jury the following instructions:

4th. That a party relying on a document or deed must prove the genuineness of same.

But the said Judge did then [and] there refuse to give the same to the said jury.

And the said plaintiffs by their counsel did then and there except to the refusal of said Judge.

And this constitutes plaintiffs' 10th exception.

And the said plaintiffs by their counsel did then and there request the said Judge to deliver to the jury the following instructions:

5th. That where the party relies on a deed as an ancient document, evidence of its antiquity must be furnished, or the party must show that the same has been constantly kept in the archives.

But the said Judge did then and there refuse to give the same to the said jury.

And the said plaintiffs by their counsel did then and there except to said refusal.

And this constitutes plaintiffs' 11th exception.

And the said plaintiffs by their counsel did then and [there] request the said Judge to deliver to the said jury the following instructions:

6th. That where documents are admitted in evidence and it is claimed that said documents are authentic or are spurious or forged, that it is for the jury to decide these questions of fact and they are empowered to consider the time of the production of said documents and all the other surrounding facts in reaching this conclusion.

But the said Judge did then and there refuse to give the same to the said jury.

And the said plaintiffs by their counsel did then and there except to said refusal.

And this constitutes plaintiffs' 12th exception.

And the said plaintiffs did then and there by their counsel request the said Judge to deliver to the said jury the following instructions:

377 7th. That if the jury find that said documents are genuine and authentic then it is for the jury to decide if they purpose to transfer the property in question in this suit, away from the estate of the ancestor from whom plaintiffs claim.

But the said Judge did then and there refuse to deliver the same to the said jury.

And the said plaintiffs by their counsel did then and there except to said refusal.

And this constitutes plaintiffs' 13th exception.

And the said plaintiffs by their counsel, did then and there request the said Judge, to deliver to the said jury the following instructions:

8th. That in reaching the conclusion they have a right to find out whether the property therein was sufficiently described to transfer ownership to the purchaser.

But the said Judge did then and there refuse to deliver the same to the said jury.

And the said plaintiffs by their counsel did then and there except to said refusal.

And this constitutes plaintiffs' 14th exception.

And the said plaintiffs by their counsel did then and there request the said Judge to deliver to the jury the following instructions:

9th. They have also the right to decide whether this was a partition of succession sale and if the former whether the same was signed by the proper parties.

But the said Judge did then and there refuse to deliver the same to the said jury.

And the said plaintiffs by their counsel did then and there except to said refusal.

And this constitutes plaintiffs' 15th exception.

10th. And the said plaintiffs by their counsel did then and there request the said judge to deliver to the said jury the following instructions:

10th. That a husband under neither the Spanish, civil or common law can stand in judgment for his wife or appear in any judicial proceeding for her in any way where her rights to real estate are concerned unless he be authorized in writing to do so by the wife, or be joined with the wife in the action.

But the said Judge did then and there refuse to deliver the same to the said jury.

And the said plaintiffs by their counsel did then and there except to said refusal.

378 And this constitutes plaintiffs' 16th exception.

And the said plaintiffs by their counsel did then and there request the said Judge to deliver to the said jury the following instructions:

11th. That a husband cannot sell or sign away the separate estate of his wife without her written consent, signed by her.

But the said Judge did then and there refuse to deliver *to* same to the said jury.

And the said plaintiffs by their counsel did then and there except to said refusal.

And this constitutes plaintiffs' 17th exception.

And the said plaintiffs by their counsel did then and there request the said Judge to deliver to the jury, the following instructions:

12th. That the property inherited by the wife from her parents is her separate property.

But the said Judge did then and there refuse to deliver the same to the said jury.

And the said plaintiffs by their counsel did then and there except to the said refusal.

And this constitutes plaintiffs' 18th exception.

And the said plaintiffs by their counsel did then and there request the said Judge to deliver to the said jury the following instructions:

13th. That not only the husband cannot sell the property of his wife or sign away her rights to real estate, but even

where the wife signs the act with him if she be not first examined by the notary separately and apart from her husband, the deed is void, although the purchaser has paid the consideration and gone into possession of the property.

But the said Judge did then and there refuse to deliver the same to the said jury.

And the said plaintiffs by their counsel did then and there except to said refusal.

And this constitutes plaintiffs' 19th exception.

And the said plaintiffs by their counsel did then and there request the said Judge to deliver to the said jury the following instructions:

14th. That under the statutes of this state the decision by a Judge in a case in which his brother-in-law is interested is absolutely void.

379 But the said Judge did then and there refuse to deliver the same to the said jury.

And the said plaintiffs by their counsel did then and there except to said refusal.

And this constitutes plaintiffs' 20th exception.

And the said plaintiffs by their counsel did then and there request the said Judge to deliver to the said jury the following instructions:

15th. That an injunction issued in such a case is absolutely void and a party deprived of possession by such illegal disposi-on or injunction is not legally dispossessed thereby, because the party obtaining said illegal decree cannot take advantage of his own wrong.

But the said Judge did then and there refuse to deliver the same to the said jury.

And said plaintiffs by their counsel did then and there except to said refusal.

And this constitutes plaintiffs' 21st exception.

And the said plaintiffs by their counsel did then and there request the said Judge to deliver to the said jury the following instructions:

16th. That in all cases where the wife is required to sign away her interest that the provision of section 1958 Florida Revised Statutes must be followed, and we ask your Honor to read this section to said jury.

"That as to sales, conveyances, transfers or mortgages of the wifes separate estate, prior to 1835 both the husband and the wife must sign, according to section 1969 of the Revised Statutes of Florida, which section we also request the Court to read to the jury."

But the said Judge did then and there refuse to deliver the same to the said jury.

And the said plaintiffs did then and there except to said refusal.

And this constitutes plaintiffs' 22nd exception.

And thereupon on conclusion of the request to charge aforesaid, one of plaintiffs' counsel (Mr. E. T. Davis) then and there proceeded to argue the case in behalf of plaintiffs, before the court and to the said jury.

Whereupon on the conclusion of said argument, the defendants' counsel (Mr. W. A. Blount) announced to the Court that he had a motion to make to the Court.

380 And the said Judge did then and there order the said jury to retire, and the said jury did then and there retire from the courtroom.

Whereupon the said defendants by their counsel (Mr. W. A. Blount) moved the court, that the said Judge should direct the verdict, and that the court should instruct the said jury to render a verdict for the defendants in the case.

And the said plaintiffs by their counsel did then and there object to said motion, on the grounds that the evidence and records introduced, disclosed many and various issues of fact, for the jury to pass upon, which counsel for plaintiffs set forth, by reviewing before the court, all the facts brought out by the evidence at great length.

But the said Judge did then and there overrule plaintiffs' objections to said motion in words and figures as follows:

Now, the motion here is to take from the jury the consideration of this case, because there are no facts for them to pass upon and that the facts are of such a character and of such consequence as would not give the privilege of finding a verdict for the plaintiffs, and that if they should find a verdict for the plaintiffs the court should set aside the verdict because of the sparseness of the facts, and where it is the case the Court does not hesitate, and has not several times, to give such instructions in certain cases.

The plaintiffs' counsel here has seen fit to oppose it in this case and the plaintiffs contend that there are certain facts which the jury should pass upon; first in regard to the accurateness of the records that have been produced here and their force and validity and authenticity and so on, and second: whether Mr. Fisher held adverse possession to this property since his appointment as receiver; since the decree of Judge of the Circuit Court by Judge McLellan.

As to the first division of that argument I understand the counsel to make charges as to the validity of these documents, beginning with the will and the proceedings that took place at the sale of the property, the protocol, the witnesses thereto, and the absence of certain signatures.

As I understand the plaintiffs' case, they have made it their purpose to ask the Court to allow the jury at this date to decide and for the Court to give the jury the law as to what ought to carry, and then tell the jury whether or not the Spanish officers who prepared these papers, upon the proofs of title to this property, and to tell the jury whether or not the facts existed that makes these papers at time valid or not. The ruling
381 of the court on this matter will cover all of this ground.

The Court, as I stated yesterday, is of the opinion, and when papers come from the proper custody, and they appear to have been in this custody, and are regular upon their face and they are both in this case, as the evidence produced tended to show, that they were treated as valid papers by the officers at that time, and by all subsequent officers that came in charge or possession of them; that these papers, the Court will not presume and will not permit a jury to presume, that there were any error therein committed by the officers at that time, which rendered them invalid, null and void, as to distinct interests long since acquired thereunder.

In other words, the Court understands the request of the plaintiff's counsel to amount to this: that the jury is to be asked to pass upon the validity in law, of these ancient papers.

As to the adverse possession of Mr. Fisher from the time of the decree of Judge McLellan to the present time, the Court does not at this moment recall any testimony of such force and character that should go to the jury and permit them to determine that Mr. Fisher has not been in adverse possession of this property under that decree of Judge McLellan.

That being the idea the Court takes of the case, it would not, in the opinion of the Court, be right to submit the case to the jury and let them find for the plaintiffs, if they should do so, and then immediately set the verdict aside under the view the Court takes of the law; that is what I would be compelled to do.

It is best for both sides in this case for the Court to make its ruling now and direct the jury, and give them the full opportunity of saying anything in law that can be said on all the papers at once, without waiting for further trial.

And the said plaintiffs by their counsel did then and there except to the ruling of said Court.

And this constitutes plaintiff's 23rd exception.

And the said Judge did then and there while the jury was at the bar, give instructions to the said jury, in words and figures as follows:

At the request of the counsel, I repeat what I have said

about being interested in this case or any land in connection therewith:

I never had any interest in this tract or any part of it; no relative or member of my family ever had or has any in-
382 terest, directly or indirectly, in any part of the tract.

The facts in connection therewith have been signed under and are filed.

Mr. Hooten, a member of the firm of Messrs. Watson & Co., has filed an affidavit the other day, setting [forth] the facts.

Gentlemen of the Jury: After a thorough discussion of the law in this case by the counsel, the Court is of the opinion that the plaintiffs have no ground upon which to recover. That being the case, if the case had been left to you to determine and you had found a verdict for the plaintiffs, the Court would have been compelled to set that verdict aside immediately; a new trial would have to have followed and all of the same matters gone over again.

The course I am about to take to terminate the trial in this Court at present and enable the plaintiffs at once to take their appeal to the Court of Appeals and any determination made upon it as that Court may think best: therefore I will instruct you, and you will find your verdict in accordance therewith, and you will find your verdict for the defendants in this case.

And the said plaintiffs by their counsel did then [and] there except to the instructions and directions by the said Court to the said jury.

And this constitutes plaintiff's 24th exception.

And the said Judge did then and there further give instructions to the said jury, in words and figures as follows:

Juries are to pass upon questions of fact; the Court is of opinion that the questions that have been brought up here are questions of law, and those questions of law are always for the Court and not for a jury.

Juries are not supposed to know what makes the legality or regularity of papers; of adverse possession and I know of no facts in this case, in my opinion, to submit to a jury.

The Court in giving the jury the verdict it gives relieves the jury of any responsibility, and you will give your verdict in accordance and under the direction of the Court.

And the said plaintiffs by their counsel did then except to the instruction and directions of the said Court.

And this constitutes plaintiffs' 25th exception.

Whereupon the clerk of the said Court writes out the verdict, presents it to the jury, for the signature of its foreman; which verdict is in words and figures as follows:

383 "We, the jury, find for the defendants."

W. B. FERRISS, *Foreman.*

And the said plaintiffs by their counsel did then and there except, while the jury was still at the bar.

And this constitutes plaintiffs' 26th exception.

And the said Court did allow the said plaintiffs until the 10th day of June in which to prepare and present their bill of exceptions, afterwards extended by order until Aug. 17th, 1902.

And the said plaintiffs by their counsel now tenders this their bill of exceptions to the ruling of the Court and annexes hereto and include herein all of the testimony and evidence offered, received and filed on the trial of this cause on behalf of both plaintiffs and defendants, and makes the same a part of this bill of exceptions, and which bill of exceptions is now tendered to the Court for its signature, and the same is now allowed, signed and sealed on this the 26th day of August, 1902.

CHAS. SWAYNE,
U. S. Judge, Nor. Dist. of Florida.

Indorsed: Filed August 30th, 1902.
F. W. MARSH, *Clerk.*

The attorneys for the defendant in this cause having represented to me, F. W. Marsh, clerk of this Court, that the foregoing, handed to me by E. T. Davis, one of the attorneys for the plaintiffs herein, as a bill of exceptions, was not the bill of exceptions signed by the Honorable Charles Swayne, Judge as aforesaid, but that certain papers had been therein inserted after such signature and that the said Judge signed a bill of exceptions before such insertion, provisionally, dependent upon an agreement between the parties as to the papers which should be inserted or upon a settlement of differences by the Judge, and the said attorneys further representing that the Judge had finally settled such differences by deciding that certain protocols and plats should be inserted in the bill of exceptions before it was used, and had notified the said E. T. Davis that he must not use the said paper styled "bill of exceptions" until the insertion of the said plats and protocols, and the said E. T. Davis demanding that I should copy the said bill of exceptions into the transcript of the record as it appears above, and without said protocols and plats, and denying that they formed any part of said bill of exceptions, and claiming the same to be properly filed and complete, I wrote to the said Hon. Charles Swayne,
384 Judge, informing him of the situation as presented to me, and received from him a telegraphic order as follows:

MONT CHANIN, DEL., *Sept.* 27th, 1902.

F. W. MARSH:

In Florida McGuire appeal make transcript from files. The one I signed is incomplete.

CHAS. SWAYNE, *Judge.*

The papers referred to above came into my possession and were withdrawn in the following manner:

In the trial of said cause there were certain records known as "The Spanish Archives" theretofore in the custody of R. L. Scarlett, surveyor general of the United States for the State of Florida, which were procured from his custody by the defendants for the purpose of introduction as evidence in this cause under agreement between counsel, and which were intrusted to my custody as clerk during said trial, but were not marked filed, being original records, and were returned by me after the adjournment of Court to the said R. L. Scarlett, upon demand made by him. No copies thereof were made and filed in the cause, the originals being in Spanish; no certified copies thereof can now be made by me in compliance with above order and there is now nothing on file from which a copy could be made.

(Signed) F. W. MARSH, *Clerk.*

And afterwards, to-wit: on the ninth day of September, A. D. 1902, the following petition for a writ of error was filed in the said cause, to-wit:

Petition for Writ of Error.

In United States Circuit Court, Northern District of Florida.

FLORIDA MCGUIRE, *et als.*,
vs. At Law.
WILLIAM FISHER, *et als.*

And now comes Florida McGuire and other plaintiffs herein, and says that on or about the 22nd day of March, 1902, this Court entered judgment herein in favor of the defendants and against these plaintiffs, in which judgment and the proceedings had prior thereunto in this cause certain errors were committed to the prejudice of these plaintiffs, all of which will more
385 in detail appear from the assignment of errors which is filed with this petition.

Wherefore, these plaintiffs pray that a writ of error may issue in this behalf to the United States Circuit Court of Appeals for the Fifth Circuit, for the correction of errors so complained of, and that a transcript of the record, proceedings and

papers in this cause, duly authenticated, may be sent to the said Circuit Court of Appeals.

JAMES WILKINSON,
SIMEON BELDEN,
and E. T. DAVIS,
Attorneys for Plaintiffs.

Indorsed: Presented to me Sept. 8, 1902. David D. Shelby, U. S. Circuit Judge. Filed September 9th, 1902. F. W. Marsh, Clerk.

And on the same day, to-wit: on the 9th day of September, A. D. 1902, the said plaintiffs, by their attorneys, filed in the office of the clerk of said Court the following assignment of errors, to-wit:

Assignment of Errors.

In the Circuit Court of the United States, Northern District of Florida.

FLORIDA MCGUIRE and MATILDA CARO
vs.
W. A. BLOUNT and WILLIAM FISHER, *et als.*

The plaintiffs in this action, in connection with their petition for a writ of error, makes the following assignment of errors, which they aver occurred upon the trial of the cause, to-wit:

First. The Court erred in refusing to recuse the Hon. Charles Swayne, the Judge of the District Court, acting as Circuit Judge, for the reason that the wife of said Judge, Mrs. Lydia C. Swayne, was personally interested in this cause.

Second. The Court erred in admitting in evidence the record in the case of A. V. Caro *vs.* Samuel Chardon and Nathaniel Thurston, trustees of the Pensacola City Company in the
386 Circuit Court of the State of Florida, First Judicial Circuit of Escambia county.

Third. The Court erred in admitting the testimony of A. V. Caro taken in said above entitled cause.

Fourth. The Court erred in admitting in evidence the abstract of title made by Joseph E. Caro and overruling plaintiffs' objection thereto.

Fifth. The Court erred in admitting in evidence a large mass of documents in block offered by defendants and in overruling plaintiffs' objection thereto and to said manner of offering said documents. That said documents should have been offered one

by one and submitted to plaintiffs' counsel for inspection and objection and the Court should have ruled on the admission of each document as offered.

Sixth. The Court erred in overruling plaintiffs' objection to the evidence offered by defendants of certain documents offered by defendants, viz.: (1) Will of Gabriel De Rivas; (2) certified copy made by R. S. Scarlett of the will and probate thereof of Gabriel De Rivas. (3) Translation of the will of Gabriel De Rivas. (4) Translation of probate of will of Gabriel De Rivas. (5) Certified copy of proceedings to sell a certain house by Maria Moreno, certificate made by Scarlett, surveyor general. (6) Translation of above documents. (7) Translation purporting to be a petition made by Maria Moreno, as executrix, for the sale of this particular property in this cause in order to pay certain debts of the estate and the proceedings upon the sale petition sale and disbursement of money arising therefrom. (8) Original proceedings in Spanish of above. (9) Translation into English from the Spanish manuscript archives of West Florida in the matter of the sale of three hundred arpents of land belonging to Gabriel De Rivas. (10) Translation purporting to be a petition by Maria Moreno, as executrix, for the sale of the property in controversy to pay debts and the proceedings thereunder. (11) Translation in connection with the authorization of Maria Moreno, executrix, to sell the land above mentioned. (12) Translation p*p*. 425 of book of the proceedings of the commissioners of the settlement of land claims in West Florida, purporting to be those proceedings and giving the title to this ground. (13) Proceedings before the commissioners for the settlement of land claims in West Florida. (14) Pages 332 and 333 book A. Proceedings of the commissioners. (15)
387 Plat certified by Joseph V. Caro, keeper of public archives, as being plat of lands in question, approved and confirmed by the commissioners, particularly No. 7. (16) Acts of Congress of 1826, p. 156, United States Statutes at Large, Vol. 4. (17) Certified copy of translation of deed from Gregoria Caro to James Fitzimmons, Samuel Smyth and John Chabeaux for said tract of land. (18) Certified copy of deed from James Fitzimmons to John Chabeaux for same land. (19) Certified copy of partition between John Chabeaux, Louis De Conde Morant and Lorenvo Millaudon. (20) Proctocol in favor of Thomas Marshall and Joseph Marshall.

Seventh. The Court erred in overruling objection of plaintiffs to the admissibility of said documents, because: 1st. That Gabriel De Rivas was living at the time of the pretended sale and that the said protocols, was and is fraudulent, spurious and forged. 2nd. That there is no proof of the authenticity of said

documents or of the official capacity or of the signatures to said documents. 3rd. That there is no proof that said documents or any purported transfer made therein, were ever recorded either in the registry book of the Spanish regime of West Florida, or in any of the record books of the American regime, and the same is, therefore, null and void and of no effect against plaintiffs. 4th. That there is no description in the said pretended transfer made therein of the property at issue in this cause. That no plat is annexed thereto; that the property referred to therein is not described by metes and bounds and other descriptions resulting from the title of Gabriel De Rivas, as required by Article VII of the regulations of Morales of the Spanish regime and without which, said title is absolutely null and void. 5th. That the Pensacola City Company, or any guarantors or assigns thereof privy to said company, are now estopped from contending that these said papers termed the protocol were or are original Spanish records or ancient documents, as in the suit of E. J. Caro *vs.* Pensacola City Company, United [States] Circuit Court of the Northern District of Florida, in 1884, the said defendants claimed in their answer that said documents had only been discovered after said filing of said suit, which allegation in said answer is in the words and figures as follows: "That the suit was brought upon the suppositoin that there was no recorded evidence of a sale of the said land by Gabriel De Rivas or his representatives, but soon after the suit was instituted, on a thorough search of the Spanish archives, the office at Pensacola, the above referred to proceedings were found," which answer in full is hereto annexed as Exhibit "D," and made part of this assignment of error. 6th. That said protocol is not a
388 public document, as no certificate of the keeper of the Spanish archives is attached thereto, either of the filing thereof in his office or the authenticity of said documents, and the same is inadmissible in evidence, and do not prove themselves. (7th) That even if said papers are admissible and proven, that under the laws of Spain the office selling said property as set forth therein (A) was without said power to make said sale; (B) the condition precedent in the sale of minors' property were not observed: (C) that the ancestress of your claimants, Paula Rivas, did not sign said act; (D) that the property therein was adjudicated to a minor without capacity to purchase, and said sale was and is a nullity. To which offer counsel for plaintiffs also objected on the following grounds: 1st. That the best evidence that the nature of the case is susceptible of must be produced. That said translation being only copies and the originals thereof in the Spanish language, that the registry of said original duly certified by the Spanish au-

thorities, must be submitted or its absence accounted for before said translation, secondary evidence thereof, can be offered or admitted. 2nd. That said purported transfer of Gregorio Care to Fitzimmons, Smyth and Chabeaux, never having been recorded or made of record in the Spanish archives, that no purported translation thereof can take the place of said missing documents or supply said defendants with a title. Said translation being only auxiliary to the proper title under the Spanish regime.

Eighth. The Court erred in permitting parol testimony of A. C. Blount to prove payment of taxes for the reason that said testimony was not the best evidence.

Ninth. The Court erred in permitting William Fisher, a witness on behalf of defendants, to answer the following question over the objection of plaintiffs, to-wit: Q. Do you know who has paid taxes to the land since 1887? and in overruling plaintiffs' objection thereto.

Tenth. The Court erred in refusing plaintiffs' request to charge the jury as follows, to-wit: "A complete Spanish grant of 1806 was sufficient to invest in the grantee and in his heirs all right and interest in the property granted."

Eleventh. The Court erred in refusing to charge the jury as requested by plaintiffs, as follows: "That such a complete grant was perfect and need not be presented to or confirmed by the American commissioners, and that any ex parte
389 action by which other parties than the grantees obtained a confirmation of this title or acknowledgment of any transfer therof (unless it be proved that the original grantee or his heirs were represented in such proceedings before the American commissioners), were and are not binding on the heirs of such grantees."

Twelfth. The Court erred in refusing to charge the jury as requested by plaintiffs as follows: "That Spanish official document purporting to sell this property in October 21st, 1817, must be shown to be the official records from the Spanish archives, and must bear the original certificate of filing in the office of the proper custodian of records under the Spanish government, and the same must have also been duly recorded or registered in the proper conveyance records under the Spanish government and must bear the proper certificate thereof."

Thirteenth. The Court erred in refusing to charge the jury as requested by plaintiffs, as follows: "That a party relying on a document or deed must prove the genuineness of the same."

Fourteenth. The Court erred in refusing to charge the jury as requested by plaintiffs, as follows: "That where the party

relies upon a deed as an ancient document evidence of its antiquity must be furnished, or the party must show that the same has been constantly kept in the archives."

Fifteenth. The Court erred in refusing to charge the jury as requested by plaintiffs, as follows: "That where documents are admitted in evidence and it is claimed that said documents are inauthentic or are spurious or forged, that it is for the jury to decide these questions of fact and they are empowered to consider the time of the production of said documents and the other surrounding facts in reaching this conclusion."

Sixteenth. The Court erred in refusing to charge the jury as requested by plaintiffs as follows: "That if the jury find that said documents are genuine and authentic, then it is for the jury to decide if they purport to transfer the property in question in this suit away from the estate of the ancestor from whom plaintiffs claim."

Seventeenth. The Court erred in refusing to charge the jury as requested by plaintiffs as follows: "That in reaching the conclusion they have a right to find out whether the
390 property therein was sufficiently described to transfer ownership to the purchaser."

Eighteenth. The Court erred in refusing to charge the jury as requested by plaintiffs as follows: "They have also the right to decide whether this was a partition or succession sale, and if the former whether the same was signed by the proper parties."

Nineteenth. The Court erred in refusing to charge the jury as requested by plaintiffs as follows: "That a husband under neither the Spanish, civil or common law can stand in judgment for his wife or appear in any judicial proceeding for her in any way where her rights to real estate are concerned, unless he be authorized to do so in writing by the wife, or be joined with the wife in the action."

Twentieth. The Court erred in refusing to charge the jury as requested by plaintiffs as follows: "That a husband cannot sell or sign away the separate estate of his wife without her written consent signed by her."

Twenty-First. The Court erred in refusing to charge the jury as requested by plaintiffs, as follows: "That the property inherited by the wife from her parents in her separate property."

Twenty-Second. The Court erred in refusing to charge the jury as requested by plaintiffs as follows: "That not only the husband cannot sell the property of his wife or sign away her rights to real estate, but even where the wife signs the act with him, if she be not first examined by the notary separately and apart from her husband, the deed is void, although the

purchaser has paid the consideration and gone into possession of the property."

Twenty-Third. The Court erred in refusing to charge the jury as requested by plaintiffs, as follows: "That under the statutes of this state the decision by a Judge in a case in which his brother-in-law is interested is absolutely void."

Twenty-Fourth. The Court erred in refusing to charge the jury as requested by plaintiffs, as follows: "That an injunction issued in such a case is absolutely void and a party deprived of possession by such illegal dispossession or in-
391 junction is not legally dispossessed thereby, because the party obtaining said illegal decree cannot take advantage of his own wrong."

Twenty-Fifth. The Court erred in refusing to charge the jury as requested by plaintiffs as follows: "That in all cases where the wife is required to sign away her interest, that the provision of section 1958, Florida Revised Statutes, must be followed, and we ask your Honor to read this section to the jury: 'That as to sales, conveyances, transfers or mortgages of the wife's separate estate prior to 1835 both the husband and the wife must sign according to section 1969 of the Revised Statutes of Florida,' which section we also request the Court to read to the jury."

Twenty-Sixth. The Court erred in granting the motion of counsel for defendants that the Court should instruct the jury to render a verdict for defendants in the case and overruling plaintiffs' objection to said motion.

Twenty-Seventh. The Court erred in the judgment and decree entered upon the verdict of the jury in this cause.

Twenty-Eighth. The Court erred in rendering an absolute judgment in favor of defendants and against plaintiffs herein.

And for these and other errors appearing on the face of the record plaintiffs in error pray that the final judgment of the United States Circuit Court for the Northern Circuit of Florida in this cause be reversed and that the same be remanded to the Court with instructions to grant a venire de nove and to be proceeded with according to law and for such other and further decree that may be proper in the premises.

JAMES WILKINSON,
SIMEON BELDEN,
and E. T. DAVIS,
Attorneys for Plaintiffs in Error.

Indorsements: United States Circuit Court, Northern District of Florida. Florida McGuire, *et al., vs.* W. A. Blount, *et al.* Assignment of errors. Filed September 9th, 1902. F. W. Marsh, Clerk.

392 Whereupon, after consideration of the foregoing petition and assignment of errors, the following order was made in the said cause, to-wit:

In the Circuit Court of the United States, for the Northern District of Florida.

FLORIDA MCGUIRE, *et als.*,
vs. At Law.
WILLIAM FISHER, *et als.*

This 8th day of September, A. D. 1902, came the plaintiffs, by their attorneys, and filed herein and presented to the Court their petition, praying for the allowance of a writ of error intended to be urged by them, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Fifth Judicial Circuit, and that such other and further proceedings may be had as may be proper in the premises.

In consideration whereof, the Court does allow the writ of error upon the plaintiffs giving bond according to law, in the sum of five hundred dollars, to be taken and approved by the Clerk.

DAVID D. SHELBY,
U. S. Circiut Judge.

Filed September 9th, 1902.

F. W. MARSH, *Clerk.*

And, on the same day, to-wit: on the ninth day of September, A. D. 1902, the plaintiffs herein came into Court and filed a supersedeas bond in the sum of five hundred dollars, as required, which bond was in the words and figures following, to-wit:

Know all men by these presents, that we, Mrs. Florida McGuire, born Larvalette, widow of ..... McGuire, and Matilda Caro, as principals, and George W. Prior and Ludwig Carlson, as sureties, are held and firmly bound unto Wm. Fisher, Mrs. Wm. Fisher, Thomas C. Watson, John Williams, William A. Blount, James W. Bullard, Mrs. Younge, widow and executrix or administratrix of C. C. Younge, in the full and just sum of five hundred dollars, to be paid to the said Wm.
393 Fisher, Mrs. Wm. Fisher, Thomas C. Watson, John Williams, William A. Blount, James W. Bullard, Mrs. Younge, widow and executrix or administratrix of C. C. Younge, certain attorney, executors, administrators or assigns;

to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 9th day of September, in the year of our Lord, one thousand nine hundred and two.

Whereas, lately at a session of the United States Circuit Court, Fifth Judicial Circuit, holding sessions in and for the Northern District of Florida, in a suit depending in said Court between Mrs. Florida McGuire and Matilda Caro *vs.* Wm. Fisher and William Blount, *et als.*, a judgment was rendered against the said Mrs. Florida McGuire and Matilda Caro, and the said Mrs. Florida McGuire and Matilda Caro having obtained a writ of error and filed a copy thereof in the Clerk's office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said William Fisher, Mrs. William Fisher, Thomas C. Watson, John Williams, William A. Blount, James W. Bullard, Mrs. Younge, widow and executrix or administratrix of C. C. Younge, citing and admonishing them and each of them to be and appear before the United States Circuit Court of Appeals for the Fifth Circuit, to be holden at New Orleans, Louisiana, within 30 days from the date thereof.

Now, the condition of the above obligation is such, that if the said Florida McGuire and Matilda Caro shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make the said plea good, then the above obligation to be void; else to remain in full force and virtue.

FLORIDA McGUIRE and
MATILDA CARO,
By their Attorney, E. T. DAVIS,
GEO. W. PRYOR, Sr., [SEAL]
LUDWIG CARLSON. [SEAL]

Sealed and delivered in the presence of:
H. P. HOLMES.

Approved by: F. W. MARSH, *Clerk*,
By H. P. HOLMES, *D. C.*

Northern District of Florida, ss.

Personally appearing George W. Pryor and Ludwig Carlson, who, being duly sworn, each for himself deposes and says that he is a surety on the within bond, that he resides in Pensacola, Florida, and is worth the full sum of five
394 hundred ($500.00) dollars, over and above all his debts and liabilities and property exempt from execution.

GEO. W. PRYOR, Sr.,
LUDWIG CARLSON.

Subscribed and sworn to before me, this 9th day of September, 1902.

[SEAL]

F. W. MARSH, *Clerk*,
By H. P. HOLMES, *D. C.*

(Indorsements:) U. S. Circuit Court, Northern District of Florida, Mrs. Florida McGuire, *et al.*, *vs.* Wm. Fisher, *et al.* Bond. Filed September 9th, 1902. F. W. Marsh, Clerk.

And thereafter, and on the same day, to-wit: on the 9th day of September, A. D. 1902, there issued out of the said Court a citation signed by the Judge thereof, in the matter of the above appeal, which was served and returned and filed with the Clerk, and is in the words and figures following, to-wit:

The United States of America, Circuit Court of the United States, Northern District of Florida.

The President of the United States.

To William Fisher, Mrs. William Fisher, Thomas C. Watson, John Williams, William A. Blount, James W. Bullard, Mrs. Young, widow and executrix or administratrix of estate of C. C. Young,—Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Fifth Circuit, to be holden at the City of New Orleans, within 30 days from date hereof, pursuant to a writ of error filed in the Clerk's office of the Circuit Court of the United States for the Fifth Circuit and Northern District of Florida, wherein Mrs. Florida McGuire, born Lavalette, and Matilda Caro are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 8th day of Sept., in the year of our Lord one thousand nine hundred and two.

DAVID D. SHELBY, *Judge.*

395 (Indorsements:) United States Circuit Court, Northern District of Florida. Florida McGuire, *et al.*, *vs.* Wm. Fisher, W. A. Blount, *et al.* Citation of Appeal. Marshal's Return: Executed the within citation of appeal at Pensacola, Fla., as follows: upon W. A. Blount, Sept. 13, 1902; upon Mrs.

Young, Sept. 16, 1902; upon James Bullard, Sept. 17, 1902; upon John Williams, Sept. 17, 1902, by personally handing to and leaving with each and every one a true and correct copy; and further upon Thomas C. Watson, by personally leaving a true and correct copy at his residence with a member of his family over 15 years old, to-wit: his son James, on the 17th of Sept., 1902; and further upon Mr. and Mrs. William Fisher, Sept. 22, 1902, by personally handing to and leaving a true and correct copy with W. A. Blount, who accepted service by consent of the said Mr. and Mrs. Wm. Fisher, said W. A. Blount being attorney of record in the case. T. F. McGourin, U. S. Marshal, by H. Wolf, Chief Office Deputy. Filed Sept. 24, 1902. F. W. Marsh Clerk.

The said writ of error being duly issued, a copy thereof was lodged with the said Clerk, for the defendant in error, and filed in the said cause. The original whereof is hereto attached and transmitted herewith.

Clerk's Certificate.

United States of America, Northern District of Florida.

I, F. W. Marsh, Clerk of the Circuit Court of the United States for the Northern District of Florida in the Fifth Judicial Circuit, by virtue of the attached writ of error, and in obedience thereto, do hereby certify that the foregoing pages numbered from one to 480, inclusive, contain a true and complete transcript of the record and proceedings had in the Circuit Court of the United States aforesaid, in the cause of Florida McGuire, *et al., vs.* William A. Blount, *et al.,* and wherein Florida McGuire and Matilda Caro are plaintiffs in error and William A. Blount and others are defendants in error, as the same remains of record and on file in said Court.

In testimony whereof I have caused the seal of said Court to be hereunto affixed, at the City of Pensacola, in the District aforesaid, this .... day of September, in the year of our Lord one thousand nine hundred and two.

[SEAL] F. W. MARSH, *Clerk.*

396 [*Writ of Error.*]

UNITED STATES OF AMERICA, *ss.*

The President of the United States,

To the Honorable the Judge of the Circuit Court of the United States for the Northern District of Florida—Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit

Court, before you, or some of you, between Mrs. Florida McGuire, born Lavalette, widow of McGuire, and Matilda Caro *versus* William Fisher, Mrs. William Fisher, Thomas C. Watson, John Williams, William A. Blount, James W. Bullard, Mrs. Young, widow and executrix or administratrix of C. C. Young, a manifest error hath happened, to the great damage of the said Mrs. Florida McGuire, born Lavalette, widow of McGuire, and Matilda Caro, as by their complaint appears. We, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Fifth Circuit, together with this writ, so that you have the same at New Orleans, Louisiana, within thirty days from the date hereof, in the said United State- Circuit Court of Appeals, to be then and there held, and the record and proceedings aforesaid, being inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 8th day of Sept., in the year of our Lord one thousand nine hundred and two.

DAVID D. SHELBY, *U. S. Circuit Judge.*
F. W. MARSH,
[SEAL] *Clerk of the Circuit Court of the United States for the Northern District of Florida.*

Allowed by: DAVID D. SHELBY.
U. S. Circuit Judge.

The within writ of error served this ninth day of September, 1902, by lodging and filing a copy for the defendants in
397 error in the Clerk's office of the Circuit Court of the United States for the Northern District of Florida, at Pensacola, Fla. Witness my hand and seal of office, this September 9th, 1902.

[SEAL] F. W. MARSH, *Clerk.*

[Indosement:] Florida McGuire and Matilda Caro *vs.* William C. Blount, *et al.* Writ of Error. Filed at .. o'clock A. M., September 9th, 1902. F. W. Marsh, Clerk.

Circuit Court of Appeals for the Fifth Circuit.

FLORIDA MAGUIRE, *et al.*, Plaintiffs in Error,

vs. No. ....

W. A. BLOUNT, *et al.*, Defendants.

On Writ of Error from the Circuit Court of the United States to the Northern District of Florida.

On motion of E. Howard M'Caleb, Esq., attorney for plaintiffs in error, and on suggesting to the Court that there is a document in the Spanish language offered in evidence and annexed to the bill of exceptions contained in the record in this cause; that said record does not contain a translation of such document into English, made under the authority of the inferior Court; that since said record was filed in this Court, plaintiffs in error applied to the Clerk of the inferior Court, who has caused a translation thereof to be made, from the Spanish into the English language, herewith presented and filed as part of this motion. That it is, therefore, unnecessary that this cause should be remanded back to the inferior Court in order that a translation may be there supplied;

It is now ordered that the Clerk of this Court do file and insert nunc pro tunc the translation into the English language of said Spanish document, duly certified by the Clerk of the lower Court, in the record of this case, and have the same printed as part thereof, without remanding this cause back to the lower Court, as required by Rule 15, relating to translations.

398 *Testament of Thomas and Joseph Marshall.*

In the name of God, Amen. I, Thomas Marshall, of the Bay of Pensacola, planter, being very sick and weak in body, but of perfect mind and memory, thanks be given unto God, calling unto mind the mortality of my body, and knowing that it is appointed for all men once to die, do make and ordain this my last will and testament, that it is to say principally and first of all I give and recommend my soul to God that gave it, and my body I recommend to the earth, to be buried in decent, Christian burial, at the discretion of my heirs, nothing doubting, but at the general resurrection I shall receive the same again, by the power of God, and as touching such worldly estates, wherewith it is pleased God to bless me with in this life, I give, demise and dispose of the same in the following manner and form.

First. I give and bequeath to my daughter Molly, ten negroes, viz: old George, his wife and three children, Londo, George and Andrew.

Also, I give to my son Joseph two negroes, young Charles and Jenny.

Also, to my son William, two negroes, Big Charles and his wife Sally.

Also, I give to my son James, two negroes, Sam and his sister Judy.

Also, I give to my son Benjamin seven negroes, Edmund and his wife and child, Levy his wife and two children.

Also, I give to my son Henry, six negroes, Dick and his wife and four children.

Also, I give to my son David eight negroes, Minty and five children, and Peter and Liddy.

Also, I give to my son Thomas six negroes, Big George, his wife and two children, Cloe and her child.

Also, I give and bequeath to my brother's son, Joseph Marshall, four negroes, Max and his wife Benah, Flora and Mitchel.

I also give my son Matthew six negroes, Tom, Judy, Tompson, Miller and Noth.

The money arising from my tar kiln, which is now on hand and nearly finished, I wish to be distributed equally among my black people, after paying for the tar barrels. and I do by this my last will and testament free three of my black people, this Limus, Ned and Billy, therefore none of my heirs must have no claim or title to them whatever. My plantation I do not leave more to one of my children than another, but to any of them that may choose to live on it, or to all if they live
399 on the place. The ready money I have, after all my debt is paid, I wish to be equally divided amongst my children, and I do hereby constitute, make and ordain my brother's son, Joseph Marshall, my sole executor of this my last will and testament. In virtue whereof, I have hereto set my hand and seal this 18th day of October, in the year of our Lord one thousand eight hundred and fourteen.

Signed, sealed, published, pronounced and declared by the said Thomas Marshall as his last will and testament, in the presence of us, whom in his presence and in the presence of each other have hereunto subscribed our names.

THOMAS MARSHALL.

WM. A. BAKER,
JAMES HALL,
THOMAS LONMAN.

Circuit Court of Appeals for the Fifth Circuit.

FLORIDA MAGUIRE, *et al.*, Plaintiffs in Error,

vs. No. ....

W. A. BLOUNT, *et al.*, Defendants.

On Writ of Error from the Circuit Court of the United States to the Northern District of Florida.

On motion of E. Howard M'Caleb, Esq., attorney for plaintiffs in error, and on suggesting to the Court that there is a document in the Spanish language offered in evidence and annexed to the bill of exceptions contained in the record in this cause; that said record does not contain a translation of such document into English, made under the authority of the inferior Court; that since said record was filed in this Court, plaintiffs in error applied to the Clerk of the inferior Court, who has caused a translation thereof to be made, from the Spanish into the English language, herewith presented and filed as part of this motion. That it is, therefore, unnecessary that this cause should be remanded back to the inferior Court in order that a translation may be there supplied;

It is now ordered that the Clerk of this Court do file and insert nunc pro tunc the translation into the English language of said Spanish document, duly certified by the Clerk of the lower Court, in the record of this case, and have the same printed as part thereof, without remanding this cause back to the lower Court, as required by Rule 15, relating to translations.

398 *Testament of Thomas and Joseph Marshall.*

In the name of God, Amen. I, Thomas Marshall, of the Bay of Pensacola, planter, being very sick and weak in body, but of perfect mind and memory, thanks be given unto God, calling unto mind the mortality of my body, and knowing that it is appointed for all men once to die, do make and ordain this my last will and testament, that it is to say principally and first of all I give and recommend my soul to God that gave it, and my body I recommend to the earth, to be buried in decent, Christian burial, at the discretion of my heirs, nothing doubting, but at the general resurrection I shall receive the same again, by the power of God, and as touching such worldly estates, wherewith it is pleased God to bless me with in this life, I give, demise and dispose of the same in the following manner and form.

First. I give and bequeath to my daughter Molly, ten negroes, viz: old George, his wife and three children, Londo, George and Andrew.

Also, I give to my son Joseph two negroes, young Charles and Jenny.

Also, to my son William, two negroes, Big Charles and his wife Sally.

Also, I give to my son James, two negroes, Sam and his sister Judy.

Also, I give to my son Benjamin seven negroes, Edmund and his wife and child, Levy his wife and two children.

Also, I give to my son Henry, six negroes, Dick and his wife and four children.

Also, I give to my son David eight negroes, Minty and five children, and Peter and Liddy.

Also, I give to my son Thomas six negroes, Big George, his wife and two children, Cloe and her child.

Also, I give and bequeath to my brother's son, Joseph Marshall, four negroes, Max and his wife Benah, Flora and Mitchel.

I also give my son Matthew six negroes, Tom, Judy, Tompson, Miller and Noth.

The money arising from my tar kiln, which is now on hand and nearly finished, I wish to be distributed equally among my black people, after paying for the tar barrels. and I do by this my last will and testament free three of my black people, this Limus, Ned and Billy, therefore none of my heirs must have no claim or title to them whatever. My plantation I do not leave more to one of my children than another, but to any of them that may choose to live on it, or to all if they live
399 on the place. The ready money I have, after all my debt is paid, I wish to be equally divided amongst my children, and I do hereby constitute, make and ordain my brother's son, Joseph Marshall, my sole executor of this my last will and testament. In virtue whereof, I have hereto set my hand and seal this 18th day of October, in the year of our Lord one thousand eight hundred and fourteen.

Signed, sealed, published, pronounced and declared by the said Thomas Marshall as his last will and testament, in the presence of us, whom in his presence and in the presence of each other have hereunto subscribed our names.

THOMAS MARSHALL.

WM. A. BAKER,
JAMES HALL,
THOMAS LONMAN.

In the Town of Pensacola, on the 19th day of November, 1814, Mr. Mathew Gus Manrique, political and military governor of this province and fort, an officer with coat of mail, Mr. Martin de Madrid, first mayor of the town counsel, who exercises the functions of justice of the peace, being informed that Thomas Marshall, an inhabitant, having died at his dwelling, about two leagues from this town, without knowing that he may have made a will, or if he is married, and only of what is vulgarly said to have some children, minors, and being necessary to put in safety the property which he may have left at his death, so that this tribunal in no time,.....after which the named justice of the peace, Mr. Martin D. Madrid, in company with the two assistant witnesses Mr. Thomas Poise de Rioboo and Mr. Domingo Sausa, with the public interpreter of the English language, Mr. Peter de Alba, beforementioned, the Sergeant of the guard, Joseph Guerra, and two soldiers, went to the house of the said deceased in order that all his papers may be examined, or of the same which have remained in the care of the host and property if he has left a will, which having been fully examined, and of what the law advises, can be valid..... second the ..... oath see that the parties interested..... they may declare what are of his belongings, with.... signs that if they had not declared all, not being by voluntary forgetfulness, to be punished with all the approval of his Highness for the determination which may correspond, which this his judicial sentence, decreed, ordained and signed.

MTEW G. MANRIQUE,

DOM. SAUSA. RAFAEL SAES.

400 Immediately we, the undersigned assistant witnesses, went to the dwelling of Martin D. Madrid and made known to him the foregoing sentence and of so having certified we give faith.

THOMAS PASO DEL RIOBOO,
DOMINGO SAUSA.

In the same town, Mr. Martain D. Madrid, in company with us, the assistant witnesses, and with Mr. Peter Gilky, in order to have appeared the public Mr. Peter de Alba being sick and being in his .... all assembled, oath was taken of the said assistant witnesses with the interpreter of confidence and all promised one .... to do and order, seal what may attain to each ones part, and they signed it with me, which I certify.

MARTIN D. MADRID,
DOMO. SOUSA,
THOMAS PASO RIOBOO.

With the .....s decreed that we, the assistant witnesses solicit a comfortable boat, for transportation to the said house with all the indidivuals that are mentioned in the foregoing decree, which we did, renting from the citizen of this town ..... with the person and two oarsmen, took it or to .... saw it .... so that and four .... each individual and that it may appear, I decree it. We give faith.

MADRID,
D. SAUSA,
THOS. PASE DE RIOBOO.

Immediately Mr. Martin D. Madrid, in compliance with the decree of the commandant of the province, went, accompanied by us, the assistant witnesses and the interpreter, Mr. Peter Guilky, sergeant and soldier, to the said habitation, and citing them to be sworn, the individuals who will be afterwards mentioned, that in fact the mentioned Mr. Thomas Marshall had died, and to whom burial was given three hundred paces, more or less, from his dwelling, on the first day of the present month, and that it all may appear, he sign it with us, that we give faith.

MADRID,
PETER GILKY,
THOMAS PASO DE RIOBOO,
DOMO. SAUSA.

401 To-day, twenty-four, being at eight in the morning, that which going to proceed with the declaration of the witnesses that are found subscribed in the testament of Mr. Thomas Marshall, came several reports that a party of Indians were coming to the dwelling, with intent of robbing what might be in it, for which reason, everyone prepared in defence. The act could not be accomplished, and that it may appear. The justice of the peace, that in order that it may appear, proceedings may be placed, which he signed, which we give faith.

MADRID,
THOS. PASE RIOBOO,
DOMO. SAUSA.

On the following day, twenty-five, having been inexact, the reports that were given to be mentioned, Hon. Justice of the Peace, he made to appear before him, the witness William, of whom oath was received, professed, upon which having been interrogated by the interpreter, Mr. Peter Gilky if he had been one of those who have signed the testament which is shown to them, and if the signature is of his hand and writing, which he sealed, when the named deceased, in this house, made his testa-

ment, as likewise, if it is the signature that the deceased was accustomed to write, that in all with exception, if he could have changed the writing in virtue of his sickness for his hand trembled? and answered that what is said is the truth according expression of interpreter, in which it is affirmed and ratified, afterwards which all, him and he signed with said gentlemen, and that we give *give* faith.

PETER GILKY, WM. A. BAKER,
DOMO. SAUSA. MARTIN MADRID,
THOM. PASE RIOBOO.

Immediately, the aforementioned gentlemen made to appear before him, James Hall, second of the witnesses who appear subscribed in what is said to be the testament, of whom before us and through the interpreter, oath was received, swearing under the penalty, and of who believed in the religion of the interpreter, who so offered it and having been asked by the interpreter if it is true that he has signed in the testament, which the deceased, Thomas Marshall, made in this house, and if this he calls in fact, as likewise if he was present when the signing of this, and having said yes, it was shown to him, who after examining it, with all attention, said, to be the same
402 which he bequeathed, in his presence of the referred, use, as likewise, the signature which they have before them, are of their fist and writing. Answers as the interpreter said, of what in it is affirmed and ratified to be in all the truth and he signed it with the interpreter; and of which we give faith.

MARTIN E. MADRID. JAMES HALL,
THOS. PASE RIOBOO. PETER GILLOT,
DOM. SAUSA.

In the same act the said gentlemen made to appear Thomas.. .... of whom we through the interpreter, oath was madeived, according to the tenor of his religion, he offered to say the truth, of whatever he knew and should be asked, having been asked about, if he signed some paper that deceased, Thomas Marshall, presented to him, and if he told him that he had made his testament and last will; and having answered, yes, it was shown to him and said to be deceased, as he certified that said is the truth in large of the oath that he took, as the interpreter said, in which is so affirmed, and ratified all that comprised this *this* his declaration by the said interpreter, and he signed it with the said interpreter, and of which we give faith.

MARTIN de MADRID, JAMES HALL,
THOM. PASE RIOBOO. PETER GILLOR,
DOM. SAUSA.

Consecutively, after seeing the gentlemen, proceeded and to inventory, and being present the nephew of deceased, executor, and being sworn in form, is ordered by said Mr. to declare whatever possessions the deceased and in ..... death, express the following for expedience of the interpreter: First the establishment of the manilo with his three almos and twenty-one Cabanas for the slaves and the tools for their labors, Item, two mules and two horses, Item twenty head of cattle ninety barrels of corn in the ear. Twenty barrels of beans. Fifty barrels of rice in the straw. One loom machine for cotton. Sixty barrels of potatoes in the bank. One boat for the service of unloading. The slaves of both sexes that appear in the testament that are all give to his heirs.

Also his slaves called Laude. Tipeder, sesy and three (puios) called Mary, Sophy and Ambly.

Also as appeared he is indebted to Mr. Peter Filiben of the House of ..... fifty dollars as appears of contract.

Item the deceased Mr. Anto Montero seventy-one dollars.

403 Item understanding which his deceased uncle is indebted to the house of Juan Inerrarity, but who ignored the account.

Item declared that his accounts at the time of his death, nine hundred and seventy-five dollars in silver and thirty-one ounces of gold.

P. S. By not having found any other thing at the death of the deceased, notwithstanding that by some involuntary forgetfulness, it may, not have conformed to this act, he offer to declare what may be in opportune time, making it appear likewise to the tribunal, that the clothes of his use he burned with which this act was finished, all remaining in the care of the named Dn. Joseph Mochell, with the conditions that he should have all at the disposal of the Honorable governor, in case that it should be required and decreed and singed [signed] by the mayor, executor, interpreter, and we, the assistant witnesses, of which we give faith.

MARTIN DE MADRID,
THOMAS PASO DE RIOBOO,
DOMINGO SAUSA.

JOSEPH MARSHALL,
PETER GILLET.

Note: That having concluded the inventory according to the proof of the executor, we did not have a list of the things which is declared in the testament for no consideration that there were some acts which shall have those at present after

said gentlemen wanted not to be known, that it should appear, and they signed it, of which we give faith.

MADRID, THOMAS PASA DE RIOBOO.
SAUSA.

Another: That this proceeding is concluded at about the evening, resolved without, and that it may appear, the expressed ordained, of which we give faith.

MADRID,
THOMAS PASA DE RIOBOO. DOMINGO SAUSA.

This act being finished, he had likewise to declare that he had to make it appear that the deceased a long time before his death, had made (donderan amilupas por terrabe) and that for his voucher, he possessed the seven documents that he made and asked that when translated to the Spanish the originals may be returned to him for any time and that it may so
404 appear said gentleman ordered diligence might be put, that they should sign, that we give faith.

JOSEPH MARSHALL,
THOMAS PASA DE RIOBOO,
DOMINGO SAUSA.

MADRID,
PETER GILLET.

On the same day we, the assistant witnesses, that in this government, we made it known to Mr. Joseph Marshall as executor so called of the deceased, his uncle, Mr. Thomas Marshall, and of being acquainted we give faith.

SOUSA. SAEZ.

In the same day we, the assistant witnesses, in compliance to the decree that precede went to the abode of Peter Gilkes, interpreter, who was named by the Mr. Martin de Madrid for brief pursuit of this diligence, who were informed he had translated the testament and documents which is advised to do, it according to his actual knowledge and understanding, and that immediatele [immediately] he offered the oath that was duly given, to do it faithfully and legally and he signed it with us, which we give faith.

DOM. SAUSA, RAFAEL SAEZ.
PETER GILKES.

Mr. Peter Gilkes, a citizen of this town, in continuing the commission that is conferred by the Mr. Martin de Madrid for service as provisional interpreter for sickness of the proprietor, Mr. Peter Gilkes in these diligence and of what is advised

to him in English language which in it is expressed in the following form:

Translation of the Testament de F)L2.

In the name of God, amen. I, Thomas Marshall, inhabitant of the Bay of Pensacola, planter, being very sick and weak in body but of perfect mind and memory, thanks be given unto God, calling unto mind the mortality of my body, and knowing that it is appointed for all men once to die, do make and ordain this my last will and testament, that it is to say, principally and first, of all I give and recommend my soul to
405 God that gave it and my body I recommend to the earth to be buried in decent Christian burial, at the discretion of my heirs, nothing doubting but at the general resurrection I shall receive the same again, by the power of God, and as touching such worldly estate wherewith it is pleased God to bless me, within this life, I give, demise and dispose of the same in the following manner and form:

First. I give and bequeath to my daughter Molly, ten negroes, viz: old George, his wife and three children, Londe, George and Andrew.

Also I give to my son Joseph two negroes, young Charles and Jenny.

Also to my son William two negroes, big Charles and his wife Sally.

Also I give to my son James two negroes, Sam and his sister Judy.

Also I give to my son Benjamin seven negroes, Edmund and his wife and child, Levy, his wife and two children.

Also I give to my son Henry six negroes, Dick and his wife and four children.

Also, I give to my son David eight negroes, Minty and five children and Peter and Liddy.

Also, I give to my son Thomas six negroes, Big George and his wife and two children, Cloe and her child.

Also, I give and bequeath to my brother's son, Joseph Marshall, four negroes, Max and his wife, Bnah Flora and Mitchel.

I also give my son Matthew six negroes, Tom, Judy, Thompson, Miller and North.

The money arising from my tar kiln, which is now on hand and nearly finished, I wish to be distributed equally among my black people, after paying for the tar barrels, and I do by this my last will and testament free three of my black people, this Limus, Ned and Billy, therefore none of my heirs must have no claim or title to them whatever.

My plantation I do not leave more to one of my children

than another, but to any of them that may choose to live on it, or to all if they live on the place. The ready money I have after all my debts are paid, I wish to be equally [divided] amongst my children, and I do hereby constitute, make and ordain my brother's son, Joseph Marshall, my sole executor of this my last will and testament. In virtue whereof I have hereunto set my hand and seal this 18th day of October, in the year of our Lord one thousand eight hundred and fourteen.

Signed, sealed, published, pronounced and declared
406 by the said Thomas Marshall as his last will and testament, in the presence of us whom in his presence and in the presence of each other have hereunto subscribed our names.

WM. A. BAKER, THOMAS MARSHALL.
JAMES HALL,
THOMAS LONMAN.

On the eighteenth day of October in the year of our Lord Jesus Christ of one thousand eight hundred and fourteen.

THOMAS MARSHALL.

Signed, sealed, published and declared by Thomas Marshall by his last will and testament in presence of us whom in his presence, and present with all others subscribed our names.

WM. A. BAKER,
JAMES HALL.

T.....

Translation of Document No. 1.

To all persons that at present, seen, known, that I, Thomas Marshall, make known that in the Creek Nation in the village Coquita, in consideration of love, good will and affection that I have for my son Benjamin, of the same nation and village, have given by these presents to another Benjamin and to his heirs, administrators, two negroes, Base and Benbesco, also fifty head of cattle cows, for him and his heirs from this time in future, for his use absolutely except no condition and for constant and to witness. I execute by my hand and seal on the second day of October of one thousand eight hundred and nine.

(Signed) THOMAS MARSHALL.

Signed and sealed in the presence of
JOSEPH MARSHALL.

Document No. 2.

To all persons that the present seen known, that I, Thomas Marshall, make known that in the Creek Nation, and in the

Village of Coquita, in consideration of love, good will and affection that I have for my son James, of the same nation and village, has give by this present, to other James and to his heirs, administrators, two negroes, Joe and his brother Meniro,
also fifty head of cattle cows, for him and his heirs, for
407 now and future for his use absolutely, excepting no condition same and constant and to witness I execute by my hand and seal on the second day of October one thousand eight hundred and nine.

THOMAS MARSHALL.

Signed, sealed in presence of
JOSEPH MARSHALL.

Document No. 3. To all persons that the present seen known, that I, Thomas Marshall, make known that in the Creek Nation and in the village of Cowuita, in consideration of the love and affection that I have for my son Matthew, of the same nation and village, has given by the present thankfully to amother [another] Matthew and to his heirs and administrators two negroes, Muiol and her child Mamy, also fifty head of cattle cows, for him and his heirs after now in henceforth for his use absolutely, excepting no condition and for constant to witness, the execution of my first and seal on the second day of October, one thousand eight hundred and nine.

THOMAS MARSHALL.

Signed, sealed and delivered in the presence of
JOSEPH MARSHALL.

Docmt. No. 4. To all persons that the present seen known, that I, Thomas Marshall, make known that in the Creek Nation and in the village of Coquita, in consideration of the love, good will and affection that I have for my son Henry, of the same nation and village, has given by th [this] present, to the other Henry two negroes, Peter and Elvy, also fifty head of cattle cows for him and his heirs after now and henceforth for his use absolutely excepting no condition and for constant and to witness the execution of my fist and seal on the second day of October, one thousand eight hundred and nine.

THOMAS MARSHALL.

Signed, sealed and declared in the presence of
JOSEPH MARSHALL.

Documt. No. 5. To all persons that the present seen known, that I, Thomas Marshall, make known that in the Creek Nation and in the village of Coquita, in consideration of the love, good will and affection that I have for my son William, of

the same nation and village, has given for by the present, the other William and his heirs and administrators, two negroes, Bill and his wife Mary, also fifty head of cattle cows for him and his heirs after now henceforth for his use absolutely
408 excepting no condition and for constant and to witness, the execution of my fist and seal on the second day of October, one thousand eight hundred and nine.

THOMAS MARSHALL.

Signed, sealed and delivered in the presence of
JOSEPH MARSHALL.

Docmt. No. 6. To all persons that the present seen known, that I, Thomas Marshall, make known that in the Creek Nation and in the village of Coquita in consideration of the love, good will and affection which I have for my son Thomas, of the same nation and village, has given by the present declaration to Thomas and to his heirs and administrators two negroes, Lissy and her sister Presilla, also fifty head of cattle, cows, for him and his heirs after now henceforth for his use absolutely excepting no conditions and for constant and to witness, the execution of my fist and seal on the second day of October, one thousand eight hundred and nine.

THOMAS MARSHALL.

Signed, sealed and declared in the presence of
JOSEPH MARSHALL.

Docmt. No. 7. To all persons that the present seen known, that I, Thomas Marshall, make known that in the Creek Nation and in the village of Coquita in consideration of the love, good will and affection that I have for my son David, of the same nation and village, has given by the present declaration to David and to his heirs and administrators two negroes, Elisa and her sister Barbarie, also fifty head of cattle cows, for him and his heirs after now on henceforth for his use absolutely excepting no condition and for constant, and to witness the execution of my fist and seal on the second day of October, one thousand eight hundred and nine.

THOMAS MARSHALL.

Signed, sealed and declared in the presence of
JOSEPH MARSHALL.

Said translation I have made in virtue of the commission that was conferred and legal according to my knowledge and understanding and that it may appear, I sign in Pensacola on the 29th day of November, 1814.

PETER GILKERS.

In the town of Pensacola to-day, first of December,
409 one thousand eight hundred and fourteen, we, the assistant witnesses, give faith of having delivered the named interpretation, for the course of this business the translation of the testament of the deceased, Thomas Marshall, and of the seven documents according to his command in the proof, of 28th of the month past and for that it may appear the (Ponemas) through diligence.

DOM. SAUSA. RAFAEL SAEZ.

Hon. Governor of this Province:

Joseph Marshall, testamentary executor of the deceased, my uncle, Thomas Marshall, in the best form, before you to appear, and that in virtue of the information and examinations of the signature, of the last will and testament of my said uncle having been made, the Hon. Mayor this being in order begs and asks of you, please to ordain, that what in it is disposed, may be declared and executed, which is justice that I ask, with costs, but to proceed from necessity, and not from malice, give,

JOSEPH MARSHALL.

Also, Pensacola, 1st day of December, 1814.

These proceedings which the commissioned Mayor, practised having been seen, and following from this, that deceased made his testament on the 18th day of October of the present year in his house, six leagues distant from this town as it is evidenced by the declarations, made by the witnesses that signed in it, persons, inhabitants of the said house, that being duly examined, the integrity of the sheet of paper, is declared by solemn and legitimate testimony of Mr. Thomas Marshall the (cloinulos) and disposition that are included, which translation runs from .... to .... let all the work be inserted in the protocol, course of public instruments, giving to the executor the testimony which he demands so that he may proceed to give completion to the final disposition of the testator's proceeds, Mr. Martin de Madrid proceeding to put the executor in possession of all previous valuation, which shall be made by two experts which the same interested shall name, being satisfactory to the named executor.

DOM. SAUSA. RAFAEL SAEZ.

Taxation of costs taken in these proceedings according to what is ordained.

The Hon. Governor for his fees,.....
410 To the Hon. Mayor, Mr. Martin de Madrid, for four amt. debs in the four days in the country.... 44 6

sumbrt, forward ..... 47..2

pesos..rrs.

sum of the value ..... 47..2
The interpreter, Mr. Peter Gilker, for equal reasons and translation of the document and testaments.. 42..4
To the assistant witnesses for the same work that the preceding writers and give occupation in all..... 71..1
The said sargeant, custodian and two ..... 8..11
..... 10
The ..... for the work 2

180P-rrls.

Of which taxation we have made according to our knowledge and understanding, in Pensacola first day of December, 1814.

DOM SOUSA. RAFAEL SAEZ.

In the town of Pensacola, on the 2nd day of December of the present year, we made it known to Mr. Martin D. Madrid and who being acquainted, we give faith.

DOM LAURA. RAFAEL SAEZ.

On the day appointed being ready, the boat and the auxillary troops which were to take the named Mr. Martin de Madrid as also the experts that the interested parties had named, of whom it had been asked to give the four men and one sargeant, to authorize the commissioned Judge in case of any difficulty, the heirs might have, these went to the house of Mr. Martin de Madrid, in order that the greater brevity, he might go to verify the diligence of estimation of the household effects, and slaves, and that he might put in possession of the donator which Mr. Thomas Marshall made in his testaments likewise the executor and putting in his charge the minors and the absent, and these having informed the Hon. commandant of the province that the said Martin de Madrid, to whom was committed this business as Judge, who was sick in bed, for which reason, it was impossible for him to verify, for which said Hon. commandant, ordained committed to avoid (alrozas) and prejudice to the interested. The lieutenant of the Louisi-

ana regiment was informed of the commission that he had to practice, and accepted it in due form, and that all may appear, said gentlemen ordered it should be put as diligence,
411 which he signed with the said lieutenant, of which we the assistant witnesses give faith (the word senor is void).

DOM SAUSA. JOSE URONILLO.
RAFAEL SAEZ.

Immediately the Mr. Jose Uronillo, second lieutenant of the Louisiana regiment of infantry, in compliance with the commission that had been conferred by the commandant of the province went aboard of the Canoe which the executor had provided, Mr. Jose Marshall, accompanied us the assistant witnesses, and two citizens of the town, whom we took as expert estimators, interpreter, the sergeant and the four soldiers of guard, and all having embarked on the trip to the named dwelling, that is six leagues *distant from this* town and cited in it, said gentlemen, he made to appear before him, Mr. Guillermo, Baker, and Mr. Anasrasia Nontes of Oco, experts named by the interested. The first on part of the heirs, and the second for that of the executor (Handose) likewise, and previous the oath of fidelity which was recorded over their charge, and having offered and promised to do it, according to their real understanding and knowledge, they signed it for its constancy with said gentlemen of which we the assistant witnesses give faith.

URONILLO, ANNT MONTES de OCA,
WM. BAKER, RAFAEL SAEZ.
DOM. SAUSA.

In the same act the referred gentlemen made to appear before him, the commissioned interpreter, Mr. Peter Gilkes, of whom before us the assistant witnesses, he received oath, which he took according to right, and informed of the commission he had to make and translate faithfully and legally, that which the experts should verify, and to examine each heir, and of the slaves those which the testator in his last will had bequeathed to them, he offered to do it, and for its constancy, signed with the named gentlemen, and we the referred assistant witnesses, for which we give faith.

PETER GILKES,
RAFAEL SAEZ.

TRULOO,
DOM SAUSA.

And being half-past five in the evening, the Hon. commissioned gentleman, then ordered suspended this business for con-

tinuation until the day following which he signed with
412 the executor, interpreter, and we the assistant witnesses, which we give faith.

TRULLO,

PETER GILKES,
RAFAEL SAEZ.

The above named gentlemen being in the above named habitation in the house of the deceased, Thomas Marshall, the 3rd day of the present month, being of eight in the morning, being present the executor, heirs, experts, interpreter and we the assistant witnesses, the estimation was begun, and prepared in the following form:

First, the house is estimated by the said experts, in four hundred dollars	$ 400.
Also we value three store houses and twenty-one huts of the slaves for his establishment, in two hundred and fifty dollars	250.
All the tools necessary for the work of said plantation thirty dollars	30.
One machine for cleaning cotton in eight dollars	8.
Six axes and twelve hoes of medium size ten dollars	10.
Eight head of cattle forty-five dollars	45.
Two costly mules one hundred dollars	100.
Sum brt. fwrd.	836.
Sum carried forward	
Two saddle horses in sixty dollars	60.
Two carts of medium size, fifteen dollars	15.
Twenty-two sheep forty-two dollars	42.
Sixty barrels of sweet potatoes	
Twenty barrels of peas	
Twenty barrels of corn	
Fifty barrels of rice in chaff	
One boat in bad condition, fifty dollars	50.
To amount brt. ford.	1003.

Note, that the lines which precede the potatoes, peas, corn and rice are not estimated, because the executor and heirs expressed that it was intended for the maintenance of the slaves and families, for which just reason, the commissioned Judge acceded to it.

413 Being after twelve said gentlemen ordered the diligence to be suspended for continuation, to three o'clock this evening which he signed with the executor, experts, inter-

preter, the heirs not doing it, not knowing how; of which we the assistant witnesses give faith.

TREULLO,
WM. BAKER,
DOM. SAUSA,

JOSEPH MARSHALL,
PETER GILKES,
ANO- MEND- DE OCA,
RAFAEL SAEZ.

On the proper day, said gentlemen, in company with the individuals which appear of the diligence, bought forward..1003 before ordained to proceed to the estimation and possession of the slaves that according to right of testament, had to be delivered to the heirs that were present, and with competent age, the rest likewise under the charge and responsibility of the executor, of the minors and the absent his negro—for not having either effects to estimate belonging to said deceased.

First negro George, of the age of sixty years was estimated by the experts in one hundred dollars 100
His wife, of sixty, of one hundred dollars 100
Amt. Brt. Ford. 1203
The negro Lauden, of nineteen years, two hundred and fifty dollars 250
One named George, of fourteen years, one hundred and fifty dollars 150
Andrew, of seven years, one hundred and forty dollars.. 140

These slaves are bequeathed by the testament to his daughter Molly, as appears by the testament, and was made known to their proprietor by the interpreter, and was told that they remain in the care of the executor, until the return of their legitimate owner, of which condition Mr. Joseph Marshall admitted to be informed, which he signed with said interpreter, of which we give faith.

TREULLO,
WM. BAKER,
DOM. SOUSA,

JOSEPH MARSHALL,
PETER GILKES,
RAFAEL SAEZ,

Sum carried forward 1793

Sum brt. ford. 1795

Consecutively following the estimation of the slaves that according to the clause of the testament, belonged to his son Joseph:

First, the negro named Young Carlos, of twenty-five years in two hundred and sixty dollars 260
414 Negro Jenny, of twenty-five years, two hundred and fifty dollars 250

Negro boy of eighteen years, in two hundred dollars..... 200
The negro Judigon, sixteen years, one hundred and seventy dollars 170
The negro Maniv, of ten years, one hundred and fifty dollars 150

The last three slaves belonged, according to testament, to his son Thomas, whom the executor and heirs expressed to be absent in the Nation and Town Cervita, which it was made known to the slaves.

Sum brt. ford. 2823

That they remain in they remain under the charge of the executor until the legitimate owner should come, also the two of Jose's, who was also absent, and being after half-past five in the evening, the commissioned official ordained the course of the estimation to be suspended, and continued to-morrow at four o'clock, which he signed with the executor, interpreter, experts, and we the referred witnesses give faith.

TREULO,
WM. BAKER,
DOM. SOUSA,
JOSEPH MARSHALL,
PETER GILKES,
ANOD MONS DE OCA,
RAFAEL SAEZ.

Sum carried ford. 2823
Sum brt ford. 2823

In the aforesaid habitation, notwithstanding of it being Sunday, in view of being in the habitation to proceed with the greater brevity in order not to prejudice the interested in this testament, the honorable commission judge ordered the course of this estimation continued to-day, 4th day of the present month, and the experts, executor and heirs being informed through the interpreter, it was continued the following form:

First, they began to they delivery of the bequeathed to his son Benjamin not having, for convenience, said ..... nothing was necessary, his estimation for which matter he proceeded to verify being the following:

Negro, Edmund 1
His wife, Judy 1
His daughter, Lucinda 1
The negro boy, Levy 1
His wife, Fannie 1
Her two children 1

2823

415 Marie Sum brought forward..... 2823
And two more that was not delivered on account of being absent in the habitation named Rose and Brembrec 2

Total donated 2

And those who were delivered in the act by disposition by said judge to the said Benjamin, he having shown to the said gentlemen to have the age competent to be married and to have children, and that he needed his slaves for the subsistence of them, in which consequence delivery of them be made to him, which verified he acknowledged himself to be satisfied, it was made known previous to the already mentioned slaves, and not knowing how to sign the delivery, the honorable commission gentle, interpreter, executor, we, the assisted witnesses, did it for him, which we give faith.

TREULLO, RAFAEL SAEZ,
DOM. SOUSA. JOSEPH MARSHALL,
PEDRO GILKES.

2823

Sum brought forward.. .... .2823

Consecutively, on the fourth day already expressed, the estimation of the slaves donated to the son of the deceased named Henry, was continued, this being absent, and in its consequence the experts proceeded with the estimation, and it was verified in the following form:

First the negro Dick, of age of thirty-five years, at two hundred dollars..... .... $ 200.00
Item, Lucia, a negro of thirty-five years, one hundred and eighty dollars.... .... 180.00
Item, the negro Peguy, of ten years, one hundred and fifty dollars..... .... 150.00
Item, the negro Pescencia, of six years of age, one hundred dollars.... .... 100.00
Item, the negress Peggy of five years of age, seventy dollars... .... 70.00
Item, another named John of four years of age sixty dollars..... .... 60.00
Item, others named Pete and Elsey.

Sum carried forward 3585.00
Sum brought forward 2585.00

416 The third donation, which the deceased made before dying to the said Henry, and their estimation could not be verified, not knowing his age for being in the nations of Indians named Corvito, which after the Hon. Commissioned Judge ordered, he delivered the said executor under his said responsibility until after the return of the heirs, and having then made understanding through the interpreter who was the legitimate owner (se cunpar mossas) for the executor who remained in charge of them, he acknowledged delivered to his will, and he signed the said will, said interpreters, experts, and we the assistant witnesses, of which we give faith.

TROULLO, JOSEPH MARSHALL,
WM. BAKER, PEDROS GILLKES,
DON. SAUSA. ANA. MON—DE OCA.
RAFAEL SAEZ,

Sum carried forward	3585.00
Sum brought forward	3585.00

Immediately said gentlemen had summoned the slaves, donated according to David, son of the deceased, and they began the estimation of the twelve slaves, as follows:

First the negro Menty of forty-five years of age, was estimated at two hundred dollars.....	$ 200.00
Item, Susan of twelve years at two hundred dollars..	200.00
Item, the negro Mingo of twelve years, at one hundred and fifty dollars..	150.00
Item, Felina, a negro of eight years, at ninety dollars....	90.00
Item, a negro, say of six years, at eighty dollars....	80.00
Item, the negro girl, named Jeny of four months, at thirty dollars..	30.00
Item, a negro named Pedro of forty-five years, the brute at one hundred and fifty dollars..	150.00
Item, a negro of thirty-five years, imported at two hundred dollars....	200.00
Sum carried forward....	4683.
Sum brought forward..... ...	4683.
Item, Elisa Mestisa and son Defecho of 21 years, the mother at $300.00	300.00
Item, Barbara, of 12 years of age, at one hundred and fifty-five dollars....	155.00

417 And this estimation being concluded, the heir to whom the foregoing slaves belonged, was absent having

made known to them who was their owner, delivery was made, and were put in charge of the executor who in said manner through the intrepreter, they remained in his charge and responsibility, and that all will appear, the said Hon. Judge, executors, intrepeters and experts, and we the assistant witnesses, signed it, to which we give faith.

TRUOLLO, JOSEPH MARSHALL,
WM. BAKER, PEDRO GILLKES,
DON. SAUSA. ANST. MOND. DE OCA,
RAFAEL SAEZ.

Sum brought forward .. .... 5139.

And after half-past twelve, the said Honorable ordered this act to be suspended, its continuance to be at three in the evening, and that it might do appear, we the said Honorable Judge, executors, experts, intrepreters, and we the assistant witnesses, signed it, of which we give faith.

TREULLO, JOSEPH MARSHALL,
WM. BAKER, PEDRO GILLKES,
DON. SAUSA. ANST. MOND. DE OCA,
RAFAEL SAEZ.

Sum brought forward .. .... 5139.

On the said fourth day of the present month at the hour named, the said executors, intrepreters and experts, in the case of the deceased, continued the estimation of slaves, that according to testament, belonged to the son of the deceased called Thomas, and the experts began in the form following:

First the big negro George, thirty-five years of age, two hundred and fifty-five dollars.. 255
Item, his wife Juana, of thirty years, at two hundred and fifty dollars..... 250
Item, Siguel at five years at seventy-five dollars..... 75
Item, Rebecca, a negro girl of two years at fifty dollars. 50
Item, Alex, of twenty-five years, at two hundred and fifty dollars..... 250
Item, Felip, a negro boy of nine years, at one hundred and fifty dollars 150
Item, Lisey, a negro boy of five years at two hundred and fifty dollars.... 250
Item, Precillo of eight years, at two hundred dollars..... 200

418 And as it has been said their owner, not being present, it was made known to them through the interpreter who was the legitimate owner, and to the executor that he had to take charge.

Sum brought forward 6618

Sum carried forward.. .....

His charge and responsibility in the meantime, said Thomas should present himself and that it may appear, and to acknowledge himself in form, and he agreed, and with interpreters, experts and we the said witnesses, which we give faith.

TRUELLO,
WM. BAKER,
DON. SAUSA.
JOSEPH MARSHALL,
PEDRO GILLKES,
ANST. MOND. DE OCA,
RAFAEL SAEZ.

Consecutively the experts proceeded with the estimation of the slaves of the heir, son of the deceased named Mateo, that belonged to him according to the clause of the testament.

First we estimate the negro Thomas of forty-five years of age, at two hundred dollars..... 200
Item, the negro Judy of forty-three years at one hundred and fifty dollars..... 150
Item, the negro Sampson, of fourteen years at two hundred dollars..... 200
Item, the negro girl Ana, 12 years at two hundred dollars 200
Item, another named Mela of 10 years at one hundred and eighty dollars 180
Item, another named Anita of twelve years at two hundred dollars 200

Item, Muniol.

Item, Naney.

In which case, being absent the heir, Mateo, also as same having in his possession the last two slaves Muniol Y—, the said gentleman ordered that through the interpreter it be made know [known] to them, the slaves before mentioned, which was their legitimate owner.

Sum carried forward.. 7,798

Sum brought forward.... 7,798

That they remain in his charge and responsibility until the arrival of the legitimate owner, and so that it might appear, the said gentlemen ordered that it be put to diligence,
419 which he signed with the executors, interpreters, experts, and we the assistant witnesses, which we give faith.

TRUELLO,
WM. BAKER,
DOM. SAUSA.

JOSEPH MARSHALL.
PEDRO GILLKES,
NAN. MON. DE OCA,
RAFAEL SAEZ.

Immediately to which the other slaves after the testament, bequeathed to his son Guillermo, and the executor, Joseph Marshall, they have been since delivered, they were present, and of the age competent required by law.

Sum carried forward.... 7,798

Sum brought forward 7,798

Said gentleman ordered, and notwithstanding that delivery was made, their names are put below that through the interpreter, it might be made known to whom they belong, and they are as follows:

To his son Guillermo:

First, the negro named bug Carlos.....1
Item, Solly, negro..... 1
Item, Nily, negra..... 1
Item, Nancy, negra..... 1

—
4

To the executor and heir, Jose Marshall, the following:

First, Max, negro.... 1
Item, Regre, mulatto..... 1
Item, Flora, negro.... 1
Item, Miguel negro..... 1

—
4

Which slaes [slaves] were made to appear, and were approved by the two neighbors.

Sum carried forward.... 7,798

Sum brought forward.. 7,798

D. Thomas and D. Jose Hardindqe, who witnessed all the estimation and diligence that were practical, that the orders of the said Hon. Judge were embarked for the greater satisfaction and integrity, with which he has proceeded in this diligence, and there should never be any distrust of the miners, they were delivered to them, and made to acknowledge as their legitimate owners, the said D. Jose Marshall, having said that the slaves as well as their owners, having found everything in conformity and delivered to his will, he ordered that it should be as diligence, that at all times it may appear
420 he signed with the executor, interpreter, the heir William, not doing it, since he said he did not know, which we the assistant witnesses give faith.

TREULLO, JOSEPH MARSHALL,
DOM. SAUSA. PEDRO GILLKES,
RAFAEL SAEZ.

In view that according to the inventory it does not have anything else to estimate, and since the executor expresses not what he did not recall, acknowledging that now any other effects and belongings of the deceased, the delay was concluded, signed by the Hon. interpreter, experts, executor, and we, the assistant witnesses which we give faith.

TREULLO, JOSEPH MARSHALL,
DOM. SAUSA. PEDRO GILLKES,
RAFAEL SAEZ.

In the Town of Pensacola on the 7th day of December, one thousand eight hundred and fourteen, the Hon. D. Treullo, sargeant of the regiment of the Louisiana, commissioned Judge by the Hon. Commandant of this province for the diligence of this estimation of the effects, buildings, slaves, which the inhabitant, Thomas Marshall, left at his death, having concluded all of his commission, and having arrived at this town at about the 12th of the morning of this day went accompanied with us to the house of the Governor, and exhibited to his Honor all of the proceeds of the said habitation, composed of 14 pages and without cover, since they were to be aggregated to the principal business, and that they all may appear he signed with us, of which we give faith.

TREULLO, RAFAEL SAEZ.
DOMINGO SAUSA.

In view of the business that second lieutenant of the regiment of Louisiana had practised, the one who had been named being sick in bed, in his consequence, and approved the estima-

tion made by the experts, that the parties interested and owners have named, that he has practised all that has taken place by right and in virtue, these last diligences he aggregated for the ends necessary, if the executor should require testimony, let it be given to him entire for the ends that might suit him,
paying the just right, the aforesaid executor being re-
421 quired to give lawful bond of his person and goods to
respond to the minor heirs and absence of said deceased, and in the meantime until his giligence [diligence] to these, in which moment that he execute it, the bond is forfeited, let the whole cost be estimated from then.

1. 18 to the 35 inclusive.

DOM. SAUSA, GONZALEZ,
RAFAEL SAEZ.

On the same day we, the assistant witnesses, entered to the executor, the Jose Marshall of the foregoing decree, through the interpreter and of being informed, we give faith.

PEDRO GILLKES,
RAFAEL SAEZ.

Taxation of costs caused in the business from page 16 before this cost according to the commandant's scale of fees.

The Honorable Governor for two whole signatures entered one dollar.

To the Mon. Judge commissioned Lieutenant D. Jose Treullo, for his fees in the field in four, including the departure and return 44
To the interpreter, Mr. Gilkes, for equal reasons 42,4
To the expert estimators for equal reasons, for the same business they had practiced 60
To the assistant witness equal reasons service and writing 755
The sargeant of custody 4
For the four soldiers for the same as in all commissions 16

Sum brought forward 243,1

Sincerely of legitimate part, to which signature he has his person and goods, bond, giving power to the justice of his majesty on their account urge him on to renounce the laws, right and privileges of his favor with the general form, which he proscribed, and in which testimony he so said it, gave and signed, being witness to the instrument.

Betanenont, D. Juan y Solr D, Anastacio Montes de Oca and assistant witnesses for failure of notary Public Domingo Laura and Rafael Saez, who signed with me.

PEDRO GILLKES, JOSEPH MARSHALL,

ANTO — M.

MATEO GONZ — MARIQUE, DOMINGO SAUSA.

RAFAEL SAEZ.

422 In the Town of Pensacola, on the 22d day of January, 1818, Jose de Sota, colonel of the regiment of infantry of Havanna, and military and political governor of this province, say that I have been told that Don Jose Marshall died the night before, so that the executor named, Mr. Juan Inerity, might be able to act with regards to his disposition and that his death may appear, the assistant witnesses go to examine the corpse, that they might put as diligence, that it is evidence, as also to inform the executor of his death, as long as it may be known, putting thereafter, the continuation, the testimony of the witnesses of the said testament, and allowing done to go and consult the Hon. Auditor of War in order that the disposition, which corresponds, being said, and since known, notary public, be named as for assistant witnesses, who having given oath in due form, act with me, named Domingo Laura, and Jose Cevallos, that accepted this charge and signing of that certificate, Sota, Domingo Sausa, Jose Cevallos.

Immediately, we, the assistant witnesses, in compliance with the foregoing decree, went to the house of the citizen of this town, Romaro Castillo, where we were informed to have died the said Joseph Marshall, and having found his corpse on a table covered with a white sheet, and in order to assure ourselves that he was the same Marshall, we lifted the sheet on the part of the head, and recognized his features, said corpse to be of the aforesaid Marshall, and that in all appearance was deceased, and that all my appear in obedience to the order, we put it as diligence, of which we give faith.

DOMINGO SAUSA. JOSE CEVALLOS.

Consecutively, we informed Mr. John Inerity, who expressed to us, was informed of his death by the same owner at the house Raymond Castillo, and that all may appear, we put it as diligence, of which we give faith.

DOMINGO SAUSA. JOSE CEVALLOS.

Note of Interpreter: In the Town of Pensacola, on the 16th day of January, 1816, I, Mr. Joseph de Soto, colonel of the regiment of infantry of Havana, political and military governor of this province, that the citizen of this town, Mr. Joseph

Marshall, has solicited through the priest of this parish, Mr. Santiago Coleman, wish to make here testimony, and since said Marshall did not know the Spanish language, being necessary to name an interpreter to express in our language that which Mr. Joseph Marshall might say in his, the official Mr. Peter Alba, being absent, named to it in his place, the
423 functions of him, Mr. Peter Gilkes, being satisfactory and understanding both languages, who informed of this nomination, said that he accepted it, sworn of faith and signed with me, and assistant witnesses, of which we give faith.

PETER GILLKES, DOMINGO SAUSA.
JOSEPH DE SOTO,
JOSE CEVALLOS.

Testament: in the name of God, all powerful, Amen. Know all who this testament and last will, now, I, Joseph Marshall, legitimate son of Mr. Mateo Marshall and Miss Martha Mothers, natural of Ireland, and I of this parish, how [now] being sick in bed, of which his majesty has deemed to give me, but in my right mind and memory, bearing to death, which is natural to all persons, sure that mine will come and its uncertain hour, and believing it present, in the high and sovereign mystery of the Holy Trinity, Father- Son and Holy Ghost, three persons distinct, and only one true God, and in all rest that our Holy Mother, Church, Catholic Apostolic and Roman, believes and confesses, notwithstanding my misgivings and that at present it is my desire to live and die as a catholic, I wish to make my testament, and for its greater validity, and firmness, named for my adviser the sovereign queen of the angels, our Mary, and our lady, that she may intercede with her most pious son for my faults and sins, under whose solemn invocation, I verify in the form following:

First. I recommend my soul to the same God who created and redeemed it with his precious blood, passion and death, the body I commend to the earth, of which it was formed, and it is my will that if I should happen to die in this town, I be burried in the cemetery of the Catholics, so being my last will.

Second. Also, I declare to be a bachelor, and not to have any general heirs since my parents died.

Third. Also, it is my last will that three masses be said for the repose of the soul, and that two dollars, which my executor will separate from my goods, be given as alms masses in its payment for the holy soul and purgatory, that it may appear.

Fourth. Also, I leave to the care of my executor, the charge of the control of my burial, that he may dispose of it with due decency, that it may appear.

Fifth. Also, I declare as my property, the habitation situated on the front of the Escambia river, bordering an one side with that of Mr. Thomas Nix, and on the other with Peter Filibert, another near the limits, named of the Indians, and the other, which I have bought from Manuel Domingos in the bayou, from the governor, of which he has not delivered
424 to me the title, till this date no sum has been paid, also nine slaves, of both sexes, named Lora with two children, Hanna and Anistita, with two children also Leida and Anna Flora, Juana and one negro, named Michael, three cart horses one important note ten cows and calves, which his cousin, Joseph Marshall, had delivered into his habitation in the spring of the present year, two ovens of tar, in the vicinity of said Bayou of the Governor, and about one hundred and fifty barrels of tar, more than nine of which are in the said vicinity of the said Bayou, plus one hundred and eighty barrels of same, which he shipped for my account and risk, in the schooner of Mr. John Forbes & Co., to Havana, called the Diana, also one hundred and fifty barrels, more or less, empty, for said effects, two hundred and seventy-two barrels of tar full in company of the name of Lucas this to pay half of the expenses, which might cost the hulls and the other expenses of the vehicles. That I have a smith complete, with two hundred dollars worth of carpenter and farming tools, in care of George. Castains, inhabitant of the River Alabama, receipt against uncle Furtes Purvel, of the amount of sixty-seven or seventy-six dollars, which receipt was found among my papers which exists in the house of Erlious Loid. Another receipt against the succession of the deceased Mr. Antonio Montero, of the sum of sixty-one dollars, which I have in my power, another receipt, which is in the hands of my attorney in Mobile, against Gillmore Pollard, of the sum of two hundred dollars; another against Portais Fellar, of one thousand four hundred and some odd dollars, as against of the receipt which I have in power of the expressed without remembering just now whether anything else is owing to me, and in case there is, and appear other receipts and documents, be found among my papers, or some other persons who may be, by my executor, to whom I charge to try to get three slaves of my belongings, named Caleb, Felix and Niley, who are fugitives, all of which I so declare that it may appear.

Sixth. Also, I declare to be indebted to Roma Castillo, of this communjty, one account of ..... dollars, that has been facilitated in silver and various objects, as also, ordered to my two cousins and neighbors, as to the carpenters and shop keepers, whose account sums up according to the account, in the sum of one thousand four hundred and seventy-four dol-

lars and one and one-half rials, to said Raymond a separate account of what each may have taken subtracting from my part the sum of one hundred and twenty dollars, value of three thousand feet of wood, which I have delivered to him, all of which I declare so that it may appear.

425 Seventh. Also, I declare to owe likewise to Mr. Fancis Bonnel, one hundred and nineteen dollars, besides thirty barrels of corn in the ear, and two other barrels of rice, so that it may appear.

Eighth. Also, to D. Juan Floralis & Co., I owe an account of .... dollars, which sum I do not know, which must appear on his books of the house, and that it may appear.

Ninth. Also, I declare to owe to Lamdin the making of sixteen hundred barrels, of two bits each, of which must be reduced [deduced] from what I have taken in the house of Raymond Castillo for a room, as also in the house of Mr. John Inerty, and in the house of Mr. Juan Bonals, and of that which appears by the anotation of my books, and so that it may appear.

Item. I declare to owe the negro Libis, named Neli, one short account of which to take notice Santiago Landmand, of which I have paid forty-seven dollars on account, another of same class, called Nede, the sum of twelve dollars, to Guillermo Lonnogan, twenty-one dollars and one rial, to D. Fernando Moreno, five dollars, and so that it may appear that the habitation that we bought by half with Elias Loid, according to writing in this office, the house satisfied the sum of one hundred and twenty-five dollars, balance only to debt twenty-five dollars. That with another account that he said is owing by me considered to make the sum of one account little more or less for that it may appear also sent his debtor to me for the sum of thirty dollars, that it may appear.

Item. I declare next that D. Thomas Riobo is indebted to me in the sum of twenty-five dollars, for which I am prepared so that it may appear.

Item. Also, declare that I have delivered and sent accounts to the minors of the deceased my uncle, D. Thomas Marshall, Jose, Molly Santiago, that which is pertinent of the succession of said deceased, of whom I have not donated the receipt for pay for the half-breed Indians, they are not accustomed to the formality that is requisite, so that it may appear.

Item. Also declare that all that pertains to the other four heirs of said deceased that are contained as they are, the slaves that corresponded with those, I have in my power, and that except the five that the American, Thomas Thallmes, robbed, that as to what pertains to this money, I have spent in main-

tenance of said minors, and of their slaves who have not yielded to them any, that on account of the war of the Indian, and the loss which they had to pass to the extension, that it may appear.

Item. Name and institute for my sick sister, Juana
426 Marshall, heir to the half of my goods, after satisfying my debts, expenses of my burial and the rest that is occasioned, and the other half delivered between my half brother, named Gulermo Littie y Ana Tuet, that they may enjoy it with the will of God, such being mine, in that what has been said, and that they have its due and punctually complied with, and I name for my testamentary executor, and holder of my goods in first place, Dn. Juan Inerty, citizen and merchant of this town, and as second, Dn. Castillo Custian Lungurgh, to which to proceed with the owner, and further diligence that may be conducive to the intervention of justice, adjoining the year I or mine if it is necessary, and I revoke and annul and give as void and of no value and effect any other testament or codicil, that before this I may have made in writing or verbally, as this is the only one which I wish to be of value, which I now make with the best form acceding to right, in which testimony in Pensacola, I made, while present on the 16th day of January, 1816. The expressed governor certified to know the maker, and so said it and signed, as also for all appearance, it is for his right mind and manner, being present witnesses, and for assistence for want of notary, who with me signed.

JOSEPH MARSHALL, PEDRO GILLKES,
JUAN SUAROS, JUAN SAEZ,
RAMON, SANTIAGO ANTO,
DOMINGO SAUSA,
JOSE DE SOTO, JOSE CEVALLOS.

It is in conformity with the original of the testament, that remains in the public office, and in virtue of what has been ordered, I present it, in Pensacola, the 23d day of January, 1816.

Twenty-one dollars, valid.

DOMINGO SAUSA. JOSE CEVALLOS.

Pensacola, Jan. 25th, 1816.

In view that the testament made by Dr. Thomas Marshall, on the 16th day of the present month, and considering that, in the 16th clause, he orders that the indebtedness and diligences be made without intervention of justice, he will deliver this to the executor named, Dn. Juan Inerity, so that in dealing with the minors that he mentioned before in the 15th clause,

so that it may be made known that they may in effect proceed.
To the making of inventory and valuation of the property within two hundred days prepared by the tribunal with
427 the sworn relation of expenses and decrees designated for its due approbation, and decrees of security of the four of the minors, who were in charge of the deceased three years, twenty-four rials, which Charles cost, which the executor, as holder of property, will satisfy.

HERNANDEZ, SATO,
DOMO. SAUSA. JOSE CEVALLOS.

On the same day, we went to the house of Dn. Juan Inerity, testamentary executor of the deceased, Dn. Jose Marshall, and he informd him of the foregoing act, of which we give faith.

SAUR.—— CEVALLOS.

On the same day, we asked some of the accounts of the mentioned deceased that are in this town, if the [they] knew the whereabouts of his sister, and of his two half-brothers, heirs of the well known deceased, and none of them have been able to give information of their whereabouts, but did say that they were not in this town, but that appears, we close it as diligence, of which we give faith.

DOMINGO SAUSA. JOSE CEVALLOS.

Taxation of costs made in the proceedings, according to what is ordered, and in accordance with the fee bill.

	Rl.
The Hon. Governor, for four half signatures	10
The Auditor, for his assessment	24
The assistant witnesses, for the testament of proceedings to decree on note paper and writing judicial sentence	48
The curator, for his work	5
	87

Pensacola, 2nd day of Jan'y, 1816.

DOMINGO SAUSA.

Inventory of the Effects existing in the possession of the Deceased, Dn. Jose Marshall, made by us, Christian Limbough, his Testamentary Executor, Mateo Hanna, commissioned by Dn. Juan Inerity, who is also Executor in person of Thomas Miller and Jamie Lannan, who were witnesses, and of Dn. Bufamin Marshall, and his Brothers, as interested in said Testamentary Execution, to-wit:

428 *In the Storehouse for Fodder or Corn Shucks.*

A medium lot.
Three plows without stocks.
One shovel plow.
One (firasse).
One cradle of iron.
One axe of two handles.
About ten hundredweight of forage.

In the Storehouse of Corn.

Three irons for plows.
Eight hoes, used.
Four (Nores).
Two storkes of plow.
Two sets of traces for horses.
One iron brand for marking cattle.
One iron for plow.
One (Esquadras) axe.
One flat file.

In the Smith.

One anvil.
One bellows.
One may pole.
One hammer.
One smith's screw.
Two pincers.
One pound of iron.
One cask.
One file.
One cart axle.

In the Dwelling House.

Five chairs.
One hat.
One pair of knives.
One trunk that contained the following books, in English:
A Trip on a Vessel.
One Barclay dictionary.
One Murray's grammar.
One Life of Plutarch.
Laws of Evidence.
A manual of inventions.

429 *In the House of the Habitant of the Bay of Cobor. Gardener of the Henlot.*

A used vest.
One vest pattern.
One book of accounts.
Two small vases.
One book in English, by Murray.
Two pair cotton cards.
Seven knives and two forks.
One spoon.
One brush for cleaning shoes.
One-half bottle of olive oil.
Eleven barrels of corn in the ear.
One barrel and a quarter of rice.

48

Four barrels of tar.
Two hoes.
Four banks of potatoes, in all about thirty barrels.
Two mules, belonging to the succession.
One mare of the deceased.
One shelve cotton peas.
One old boat.

Slaves of the Deceased.

Mignit, of 18 years of age.
Flora, of 35 years of age.
Juna, of 25 years of age.

Of the Minors of Benjamin Marshall.

Livy, of 20 years of age.
Su, with Francisco, of 25 years, and one girl of 2 years.
Edmundo, of 30 years of age.
Sununda, his daughter, of 2 years.
Judice, his wife, of 30 years.
Exequiel, his son, of seven years.
Maria or Peguy, of 3 years.
Jeny, of two years.
Cloce, of 35 or 20 years.
Felipe, his son, of seven years.
Elisa, of 21 years.

430 *And also of the Minors of Henrique Marshall.*

Dick, of 40 years.
Lucia, his wife, of 30 years.

Peguin, his daughter, of 12 years.
Pasiencia, daughter, of 8 years.
Poxi, son, of 5 years.
Juan, of 4 years.

All of the Minors of Mateo Marshall.

Thomas, of 46 years.
Judi, his wife, of 40 years.
Ana, his daughter, of 5 years.
Sanson, of 16 years.
Nabaniel, of 2 years.

All of the Minors of David Marshall.

Pedro, of 40 years.
Minde, his wife, of 35 years.
Susana, his daughter, of 14 years.
Felix, his son, of seven years.
Lidy, his wife, of 30 years.
Juan, his son, of 12 years.

Six also, which the Deceased in His Testament Had No Knowledge of.

Sara, a mulatto, of 25 years.
Ana, his daughter, of 4 years.
Naney, a daughter, of 15 years and 7 months.
Cecillia, of 28 years.
Linder, his daughter, of 4 years.
Nany, daughter, of 12 years.

Live also, which he called the American Thomas Hollmes, as appears by the testament which named.

Papeles.

Seven documents of Don Thomas Marshall in the English language numbered from one to seven, in which appears what he left his minor children. Three receipts of costs paid by the deceased Jose Marshall to the assistant witnesses amounting to four hundred and forty dollars. Another receipt
431 of D. Angel, by which it appears that the deceased paid to him two hundred and seventy-five dollars for the treatment to his uncle, Dn. Thomas. Another of Dn. Fernando Moreno, which he paid with some motive on obligation in the English language in favor of the deceased, Jose Marshall, in which another of this same name obliged himself to deliver some

cotton in his habitation. One account in the same language of losses in the Creek Nation importing $2,730.00 signed by Will McCandle, two obligations of it, named Josiah Taylor, one of $1,000.00 with a document to her, remembers $700. and another one thousand three hundred dollars without any indorsement. A small lot of several private sales, all in the English language. And there not being any more household effects, slaves or papers, other than are included in this inventory, it is considered as concluded, and the executor and representative of Dn. Juan Inerity signed it with the two witnesses that made it, a half breed Benjamin Marshall and his brother not doing it, for not knowing how to write in the knowledge of the deceased, and five leagues distant from the Town of Pensacola, on the 5th day of February, 1816. Between witnesses it says &c.

MATHEW HANNA, CHRISTIAN LIMBOUGH,
THOMAS MILLAR. JAMES LANNAN.

On the 18th day of February, 1816, we, Dn. Juan Inerity and Dn. Christian Limbaugh, testamentary executors of the deceased Dn. Jose Marshall, having convened in the dwelling about five leagues distant from the Town of Pensacola, close to the Bay of the Governor, or of his (Mulatta) to the effect of proceeding to the estimation of the inventory of the goods, and named as estimators, Dn. Millan de la Carrara and Dn. Jose Maria de la Pena, who agreed of good will to accept said charge, and as witnesses the citizen Thomas Millar and Guillermo MacFaron, who also accepted and following the order of the Governor, volunteered that was known the death of Dn. Thomas Marshall, uncle of the deceased, it was began in the form following:

First was estimated the old house of the deceased, which is totally deteriorated and falling, at $60.00.

Also we estimated the store house and the huts of the negro slaves, all in a state of rottenness, at $50.00.

All the tools and iron works pertinent to the habitation according to the inventory, all in a state of abandonment, at $30.00.

Two hoes, all old and much used, $5.00.

432 Five chairs, old, and of wood, one of them broken, at $5.00.

Some books and clothes, old according to the inventory, $5.00. For all $5.00.

The tools of the barge, very old and bad, including the bellows, at $40.00.

Also a 10 hundred weight forge, at $10.00.

12 barrels of corn in the ear, $15.00.
One barrel and a quarter of rice, $8.00.
Four banks of potatoes, in all about 25 barrels $25.00.
126 barrels of tar, delivered to Pensacola during his sickness and are the same mentioned in his testament as being in the Bay of Mulatto, supposing twenty-five barrels more or less valued at so much each, $253.00.
The expenses of conducting it to Pensacola is 6½ rials, each in the condition of much split, the hoops having come off, and necessitating a great repairing, 102.3.
Fifty barrels of tar in the house of Ramon Castillo, old and in need of repairs of cooper, for cause of the considerable leakage that they suffered, at 43.6.
And 30 barrels empty, valued at 3 rials each one having two ovens of tar not finished on turning out, 500 other barrels, 400 of which barrels, estimated cost barrel is 2½ rials, 281.2. 230 barrels of tar that are in the hands of the law, he claiming half of his salary and all of the expenses in the making and handling of the barrels, ten (10) rials, 236.0.

1228

Two mules pertaining to the succession, valued at $100.00.
One more appurtenance of the same deceased at 40.00.
One old boat in Pensacola, which being open and destroyed on the bottom, valued at $20.00.
An old and rotten boat at $15.00.
One old rotten barge at $2.00.

Slaves of the Deceased John Marshall.

Michael, of 18 years, valued at $200.00.
Flora, of 35 years, at $180.00.
Juana, of 28 years, valued at $200.00.

Of the Minor—Benjamin Marshall.

Lubi, of 30 years, valued at $250.00.
His wife Francisco of twenty years, and child of two years, $200.00.

2235.5

433 Edmundo, of 30 years, at $200.00.
Judit, his wife, of 30 years, $180.00.
One girl child of 2 years, at $50.00.
One boy child of five months, named Edmundo, at $30.00.
Bambri, of 20 years, at $200.00.

Of the Minor, Thomas Marshall.

Jorge, of 30 years, estimated at $230.00.
Juana, his wife, of 25 or 30 years, at $200.00.
Exequiel, his son of 7 years, at $75.00.
Maria or Peguy did not estimate, for was near death.
Tnir, a girl of two months, at $25.00.
Cloce, of 30 years, valued at 25 dollars.
Felipe, his son, 7 years, at $100.00.
Lissy, daughter of big Billy, 30 years, at $225.00.

Of the Minor, Henry Marshall.

Dick, at 40 years, at $200.00.
Lucia, his wife, did not estimate, for was (Espiranda).
Peguy, his daughter of 12 years, at $150.00.
Pasciencia, of 8 years, at $100.00.
Posey, of 5 or 6 years, at 70 pesos.
Juan, of 4 years, at $70.00.

Of the Minor, Mateo Marshall.

Thomas, of 40 years, estimated at $200.00.
His wife, Judi, of 43 years, at $150.00.
Sanson, of 16 years, at $225.00.
Ana, of fifteen years, at $200.00.
Milly, of three years, at $180.00.
Nathaniel, of 12 years, at $175.00.,

Of the Minor, Martin Marshall.

Pedro, a brute of 45 years, at $150.00.
Mindu, his wife, of 35 years, at $200.00.
Susana, his daughter of 14 years, at $200.00.
Felix, his daughter, of 15 years, at $90.00.
Ledy, of five years, at $80.00.
Jerry, his son of 18 months, at $50.00.
Lady, his wife, of 35 years, at $200.00.
Nina Juana, of 12 months, at $30.00.

434 *Six Other that the Deceased Declared Belonged to Him.*

Sara, a mulatto of 25 years, at $200.00.
Ana, his daughter of 4 years, at $70.00.
Nani, a child of four years, at $40.00.
Cecilia, of twenty-eight years, at $150.00.
Lindes, his daughter of four years, at $70.00.
Nani, a child of two years, at $40.00.

Five that Are Called the American Thomas Hollmes.

That it appear in the testament, which estimation we cannot verify on account of being absent, with which being furnished the estimation the sum all told is $7,500.00 and this diligence was finished, which the executors, estimators and experts and witnesses signed.

JUAN INERITY,
JUAN M DE LA PENA,
WILLIAM M. PHERSON.

CHRISTIAN LIMBAUGH,
MILLAN DE LA CARRARA,
THOMAS MILLAR.

Don Juan Inerity, citizen of this town and testamentary executor of the deceased Dn. Jose Marshall, in the form that may seem best before your Excellency says that appeared the testament of said deceased by decree of the testament of the 25th day of January of the present year, and we proceed to the inventory and to the estimation of the goods of said deceased and in the time seems in the diligence we have practiced and join to this proceeding and as to this testamentary execution has a known relation with that of Thomas Marshall and of the deceased Dn. Jose, who was his executor, we beg your Excellency that both be united in one record, and so that it may appear in them the past that one report to the expressed sons of the deceased, in conformity with what he ordered in his testament, that in its consequence, your Excellency may order the judicial sale of the goods belonging to the deceased and of his three slaves named Miguel, Flora and Juana, so that with the product we may be able to pay the debtors to clear the testamentary execution, for in this way we wish to avoid, and in virtue of this we beg your Excellency to order as we ask in justice, we swear to proceed from necessity and not from malice.

Another act of the deceased declares in his testament
335 as his, the six slaves which I expressed in the last part of the inventory and estimation, named Laura, Mulata, his daughter, Ana y Mary Custia, and her daughter, Linden y Nany, being indebted to us that they belonged to the deceased uncle, Dn. Thomas, we make it known to the tribunal. And so that it may be agreeable, it may order them to be sold with those of the deceased, and their product be divided between the minors, to whom in our conception of justice which we ask as above.

JUAN INERITY. CHRISTIAN LIMBAUGH.

PENSACOLA, *6th day of November*, 1816.

In the manner they arranged as he ask.

T. MARSENT,
DOMO SOUSA. JOSEPH CEVALLOS.

In the same day we made it known to Mr. John Innerrarity and Christian Limbough, we give faith.

SOUSA. CEVALLOS.

Note: That appears of this day the edicts prepared were posted in the wall, we give faith.

LAURA. CEVALLOS.

Another which appears of the 9th new notices were posted showing value of the slaves for the 20th of the present month, we give faith.

SOUSA. CEVALLOS.

Another, on account of the slaves not being able to arrive from the dwelling to this town, the day appointed for the sale it was suspended until the following day, the 27th, we give faith.

LAURA. CEVALLOS.

Another, that on account of Mr. Joseph Masot, commander of the town, not having arrived, his predecessor ordered this diligence to be suspended until said gentleman should order, what might be convenient. That it may appear, we note it and give faith.

DOM. SOUSA. JOSE CEVALLOS.

Another: That by disposition of the Hon. Commandant, today 3rd day of December, was begun the sale of the slaves and other property belonging to the deceased Joseph Mar-
336 shall, and his Excellency named the Adjutant Governor, Burtura Dubrioiall, to preside in the sale, and that it may appear, we note it, of which we give faith.

SOUSA. CEVALLOS.

In the Town of Pensacola, 3rd day of December, 1816, Mr. Dontura Dubreinel, Lieutenant of the Louisiana Regiment, and Adjutant Governor in virtue of the commission that was conferred on him, accompanied by we [us], the assistant witnesses, went to the house of John Forbes & Co., to give compliance to the sale of the negroes and other property belonging to the deceased Joseph Marshall, as ordered by decre [decree] of the 6th of November, so that being in it, previous the

customary calls that were give by the drimrit was begun in the following form:

First, was cried the negro named Mikel, who, after several bids and raises, was knocked down to Captain Mr. Marcus de Villiers, in the sum of three hundred dollars. Right after was verified the cry of the named Flora, and in the same way was knocked down to Mr. Ramon Castillo in the sum of one hundred and eighty dollars, $180. Immediately was cried the negro named Juana in the same way was knocked down to Guillermo McPherson in the sum of two hundred and sixty-five dollars ($265.00). In the same act was cried the negro named Sarah and her two daughters named Hannah and Anna, who were knocked down in the same way to Captain Marcus de Villiers in the sum of three hundred and eighty dollars (-380). Immediately was cried the negro named Sarah and her two daughters named Hannah and Anna, who were also knocked down in the same manner to the said Capt. Marcos de Villiers, in the price of five hundred dollars ($500). And being after half past twelve, the aforesaid adjutant ordered this diligence suspended to continue at three in the evening of said day, having cited the persons who had assisted, for said hour, and he signed it with the executor and we, the assistant witnesses and auctioneer, to which we give faith.

WILLIAM McPHERSON,
DUBRID,
RAMON CASTILLO,
DOMINGO SAUSA,
JOHN INNERRARITY,
CHRISTIAN LIMBOUGH,
MARCOS DE VILLIERS,
JOSEPH CEVALLOS.

437 In the said day, month and year, being the hour named, was in the same place in company with us, the witnesses, the commissioned adjutant, Mr. Ventura Dubreul, with object of continuing the auction sale, and it was verified in the form following: First was cried a boat with its two sails, two oars, an anchor and its helm, and after several bid [bids] and raises, it was knocked down to Mr. Whiten Baimon in the sum of forty dollars ($40). And since there was no other property present to cry out, said adjutant ordered this act suspended until further advice and he signed it with the executor, auctioneer, with us, of which we give faith.

DUBRENEL,
DOMINGO LAURA,
JOHN INNERRARITY,
CHRISTIAN LIMBOUGH,
JOSEPH CEVALLOS.

Honorable Commander of the Province:

Mr. John Innerarity and Christian Limbrough, citizens of this town, executors and holder of the goods of the deceased Joseph Marshall before in the form which may seem best, say: That in November of the year passed of 1824, died in this town Mr. Thomas Marshall, of which deceased Mr. Joseph Marshall, who was his only executor, tutor and administrator of the goods of his minor children, that he named in his testament called, Molly, Joseph, William, James, Benjamin, Henry, David, Thomas and Matthew, and by reason of the death of said Mr. Joseph Marshall, in January of the present year, having named us as his executors, we have practiced the diligence of inventory, estimations of the goods and sale of the belongings of the same, as it is proved by the proceedings which exist in this tribunal, but having learned minutely of the debts, expense and arrears, of both successions we found that of the deceased Mr. Joseph proved, in one thousand dollars more or less and we could not assist them what it is, for reason of the relation which the testamentary executor of Mr. Thomas, has with that of his nephew Mr. Joseph, but it is evident that the greater part of said debts as the deceased declares, in clause 15 of his testament, proceed from provisions, for the maintenance of the same minor and the slaves, and many other expenses which they have occasioned since the year 1824, without they having yielded any product with their labor either on account of the political Camp we have examined in this province since said epoch, or of the very small product of the harvest, on account of the sterility of the land and drought that has been experienced this year, or for obstacle of
426 said slaves who accustomed to the use and customs of the Indians, are selfish and do just what they please in which conception continuing in the the same line two or three years, then the mortgages will increase and the minors will be oppressed, in the inheritance, which correspond to them and assigned to them their deceased father, for the said slaves of very little about working, being sure that they will not want food, clothes and assistance in their sickness, in this virtue we beg your excellency, to determine what you may consider best, in conformity with justice, to free us from the responsibility, which falls upon us as executors, in that the minors may not be prejudiced in the part which may correspond to them; we swear to proceed from necessity and not from malice. Faith.

JOHN INNERARITY,
CHRISTIAN LIMBROUGH.

Pensacola, 16th day of December, 1826.

We sign the proceedings, in view for the providence that might correspond.

MASOT. JOSEPH CEVALLOS.
DOMINGO LAURA.

On the same day we made it known to Mr. John Innerrarity. We give faith.

LAURA. CEVALLOS.

Pensacola, December 18th, 1816.

Having examined these proceedings and in view that I am just now without a lawyer to consult about the providence, which correspond to the request pretended now by the executors they may ask directly what they pretend, that the providence which correspond be given, and that it be according to justice.

MASOT. JOSEPH CEVALLOS.
DOMINGO LAURA.

On the same day we made it known to John Innerarrity and Christian Limbough, as executor of the deceased, Joseph Marshall, we give faith.

LAURA. JOSEPH CEVALLOS.

Pensacola, 23rd day of December, 1816.

Since the auction sale ordered by the decree of 6th of November of the present year was suspended by request of the executor on account of not being present the effect to be sold, let the cost originated from pages 55 till the conve-
439 nience by the executor be taxed if it should be continued, the time, of being passed.

MASOT. DOMINGO LAURA.

On the same day we made it known to John Innerarrity, and Christian Limbough as executors of the deceased, Joseph Marshall, and of being informed, we give faith.

LAURA.

Taxation of costs occasioned by these proceedings as it is ordered and according to the Royal fee bill: To the Honorable Governor as his fees, 12 bits. To the second lieutenant, Mr. Ventura de Bridel, for two assistences, 44 bits. To the assistant witnesses for two acts and four informations, 66 bits. To the auctioneer and drummer for their work, 16 bits. To the taxator for the work and writing, 5 bits. Total 139, was 17 dollars and 3 bits.

Pensacola, 23rd day of December, 1816.

DOMINGO LAURA.

Hon. Commander:

Wm. Marshamm [Marshall], son of the deceased, Thomas Marshall, and of age, in his name, and that of the other brothers, make it known with all respect before your excellency, that, being in the Nation Cavutis, it has come to my knowledge that by request of John Innerrrarity and Mr. Christian Limbough and by disposition of the Tribunal, some slaves and other belongings of testamentary execution, of my deceased father, were sold, and as anyway, I ignore information of proceedings I beg your Excellency to order these proceedings which have been practiced in order with these relations delivered to me with a character of restitution, so that with this indispensable information, I may request what may suit my right, and that of my said brothers. Pensacola, 24th day of December, 1816.

WILLIAM MARSHALL.

Pensacola, December No. 0th, 1816.

As he requests, I order the interested parties to name an attorney in this town with whom they will consult the tribunal.

MASOT. DOMO. LAURA. JOSE CEVALLOS.

In the same day, we made it known to William Marshall, we give faith.

LAURA. CEVALLOS.

Immediately, we notified the executors, John Innerarity and Christian Limbough; and we give faith.

LAURA. CAVALLOS.

440 Account and sworn relation, that we the underwriters, testamentary executors of the deceased Joseph Marshall, make of the debt which appear against his testamentary execution, and that the deceased uncle, Mr. Thomas Marshall, of whom was executor and holder of property, the said Mr. Joseph of what has produced the transfer of the slaves from the first of February of last year to the end of December of same, what has been paid to the creditors of both testators, and what remains in debt at the present day.

Debts of both Tetators.

To Ramon Castillo for his account No. 1	$1501.7
To Mr. Samuel Acre, for his receipts No. 2	200.01
To Mr. Franco Bonals, for his receipts No. 3	198.93
To Manuel Domingues, for his receipts, No. 4	125.
To Mr. Peter Fillibert, for his receipts No. 5	72.04
To Mr. John Bta. Alech, for his receipts No. 6	102.04

To Ramon Castillo, for his receipts No. 7	43.
To Guillermo Landman, for his receipts No. 8	21.51½
To Mr. Christian Limbough, for his receipts No. 9 ..	590.
To Amto, Ventura Gil, for his receipts No. 10	10.05½
To Thomas Nicol, for his receipts No. 11	3.07
To Jacob Kurker, for his receipts No. 12	20.
To Mr. John Forbes & Co., for his receipts No. 13 ..	108.03¾
To John Moreno, for his receipts No. 14	5.
To Mr. Joseph Maria de la Pena, for his receipts No. 15	34.
To John & Co., for his receipts No. 16	46.01
	$7084. 2¾

Hon. Commandant of this Province:

Mr. John Innerrarity and Mr. Christian Limbough, testamentary executors of the deceased, Mr. Joseph Marshall, before your excellency in the form that may seem best, say, that since first of February, of the year last passed, we took charge of said testamentary proceeded to the formation of inventory of the goods, estimation of them and settling with the creditors of the accounts pending, and as said deceased was executor, holder of goods, and curator of the minor heirs of his uncle, Mr. Thomas Marshall, who having died the year before, we solicited and it was acceded to by the tribunal to unite both testaments for the relation and connection, that they have between them endeavoring to draw out the greater benefit of the work of the slaves and also the greater part of these
441 are women and children, all our diligence were in vain, for the small number of working slaves, and for the unseasonableness of the time, that has been extremely dry and warm, on account of the like [lack] of rains, or perhaps by the practice, and the most convincing reason of the sterilty of the land, that they have cultivated so that it has been little or nothing of the benefit which has been derived from said slaves on account of the harvest being for that reason entirely lost, said testamentary being mortgaged in a great amount in that it has been necessary to have this increased for maintenance of the slaves, to clothe them, and cure them in their sickness, as for other reasons occasioned by the irregular conduct of the said minors, and we having to form the accompanying account and sworn relations that with the corresponding vouchers we present.

By it is seen that the total debt of the testators are $7804.2-¾. That only $2581.05¼ have been paid to the creditors. Consequently, remaining on the present day, $4502, of which are still to be reduced $692. That result as balance, in the a

count particular of the deceased, Mr. Joseph, and remains to liquidate, $3813.03¾.

This was progressively increasing the corresponding interests and increase of the expenses, which the said slaves occasioned, without there being any way for them to produce anything with the little work they do, for they are very loving of laziness, and the greater part, as we have said, are women and children, not at all fit for the cultivation of land, the sterility of which, on account of the lack of rains, has occasioned the last of the harvest of the year before, which was scorched by the heat of the sun, as it has happened to the other inhabitants of this vicinity, who are also are in the same case, of not having of what to occupy their slaves.

If it should be in our power to put a remedy to the faults which are notoriously known, we would do it with all good will, so we find ourselves in greater embarrassment and only confide in the upright justification of your Excellency order to providence, you might deem most opportune in favor of the said minors, being at, as we think, selling the said slaves, at auction, so that satisfied the debts, the balance be put at redeemable interest, until the said minors should be at age, or in the manner your Excellency may deem best in justice to avoid the damages which we ask, swearing to proceed from necessity and not from malice, another, there not being in this God, Father of minors, and those of the deceased, have no kind of person to represent them, your Excellency will please name a
442 curator that may accept, swearing the charge of it that with his knowledge may be proceeded by persons arranged in justice, which we are as above.

Another. It behooves us, as curator of the heirs of Mr. Joseph Marshall, that are absent, that he may arrange what to them may correspond.

Appearing to us likewise, if it pleases your Excellency, that he ca- be it, to avoid the great expense that would be caused by naming as curator of the minors as we do not think there is any incompatibility we ask as above.

JOHN INNERRARITY.

Camp of Barancas, 22nd of February, 1817.

As presented with the accounts joined, let these be united to the acts of the matter after recurring the providence the principal, and in what refers to the first and second annexes, as they ask naming to the effect for one and the other the captain of the Louisiana regiment, Mr. Benigno Garcia Culdon, to whom he accepted under oath, will be delivered the acts, that in view present what he may judge in justice in form of said minors.

MASOT. DOMINGO LAURA.

JOSEPH CEVALLOS.

In the same day, we, the assistant witnesses, went to the Town of Pensacola, and made known the foregoing providence to Juan Innerarity and to Christian Limbough, and of being informed, we give faith.

LAURA. CEVALLSO.

Continued the verification, we went to the abode of the captain of the Louisiana regiment, Mr. Benigno Garcia Calderon, who informed of them, answered, that, on account of his many occupations, in the actual service, cannot acede to nor take charge, of the commission that is made to him by the tribunal, and that it may so appear, of which we give faith.

DOMINGO LAURA. JOSEPH CEVALLOS.

Hon. Commissioned Commandant of this Province:

Mr. John Innerrarity, of the commerce of this town, first executor of Mr. Joseph Marshall, in form which may seem best before your Excellency, says: that, at daybreak, on the 23rd, a family of negroes belonging to the succession escaped from the house, consisting of one negro and negress and their three children, that they suspect with just reason that they have been seduced, by somebody, for though they have practiced active diligencies, to learn the way they took, it has not
443 been possible to succeed, and I presume the same will happen with the rest of the slaves of the said succession, in which virtue and to the respect of clearing his responsibility, and that of the second executor, who is absent, in his dwelling, he makes it known to the tribunal, so that it may determine in regard to the solicitude which he has made, to proceed with the sale, at public auction, of said slaves, and though this may avoid the prejudices, which are being made in the maintenance of them, for I beg your Excellency to dispose and order as I have asked, for myself and in the name of the present executor, being justice, and I swear to the necessary.

JOHN INNERRARITY.

Camp of Barrancas, 28th of March, 1817.

In view of the said, by John Innerarity, the tribunal being able to accede to his solicitude, while there is no person who may want to act as defensor and curator, of the minors, that with his absence, consent to what he asks and notwithstanding that Mr. Benjamin Gracia Calderon, captain of the Louisiana regiment, was named for the effect, in that this one account of his legal acceptation renounced so that the damages which this part expounds, is named curator and defensor, Mr. Thomas Encargos de Francisco la Bonals, to whom it will be

made known for his acceptation and oath, and in accordance may return the diligence in view of advising what may correspond.

MASOT, DOMINGO LAURA, JOSE CEVALOS.

In the 29th of the present month and year, we, the assistant witneses, went to the Town of Pensacola, three distant of this camp, and give notice of the proceedings to Mr. Francisco Bonals.

Product of the Work of the Slaves.

By the relation which accompany the No. 17. let it appear that have come since the first of February, 1816, till the end of December of the same year by the work of the slaves, $1817.1-¾.

Note.

By the account which accompany under the No. 8 is credited the inversion of the 13 barrels, 1340 barrels of tar received as belonging to the succession.

444 Paid to the Creditors.

To Ramon Castillo	$ 247.7
To Samuel Acre	200.1
To Franco Bonals	198.3
To Manuel Domingos	125.“
To Peter Filbert	72.“
To John Bta. Alech	102.“
To Ramon Castillo	43.“
To Guillermo Langan	21.5
To Antonio Ventura Gil	10.5
To Thomas Nicol	3.7
To Jacob Kelker	20.“
	1745.5

Debts still Owed by Both Testators.

To John Forbes & Co.	3452.½
To Christian Limbough	590.4
	4042.2
Sum before	$4042.4-½
To Ramon Castillo	374.“
To Joseph Ma. de la Pena	35.“
To John Forbes	46.“
To Fernando Moreno	5.“
	4502.5-½

The total of what is still owed as demonstrated by the account sums up to the amount of $2.5-½ rls., of hard silver, which we swear in due form by God our Lord, Pensacola on the 28th day of January, 1816.

On the twenty-ninth day of the present month and year, we and the assistant witnesses went to the Town of Pensacola, three distant from this camp, and notified Mr. Franciso Bonals of the providence that proceeds, and he informed of their contents, answered that he would tell us on the following day if he could accept or not said charge, and that it may appear we put it as diligence, of which we give faith.

JOSE CEVALLOS.

DOMINGO LAURA.

Right after, appeared before us, the underwritten assistant witnesses, Don Franciso Bonales, and expressed to us
445 that in virtue of the answer that he had given to us on the preceding evening, and in order to comply with the providence of the tribunal, begged us to put as diligence the following, wishing to accede to the succession of the deceased Jose Marshall, the sum of .... dollars, he cannot consequently accept the charge of the curator and the attorney of the minor children of the deceased Thomas Marshall, which that it may appear, we verify, signing it with us, of which we give faith.

DOMINGO LAURA, FRANCO BONALES.

JOSE CEVALLOS.

Camp of St. Charles de Barrancas, April 1st, 1817.

Being necessary to avoid further expenses to the succession and not having any other motives that could excuse him of the charge with which he has been entrusted as curator of the minors, and attorney of the property of the deceased Jose Marshall, and of his uncle, Mr. Thomas, required Mr. Franco Bonales not to accept it for the benefit of the minor heirs, absent heirs and creditors, and with its result arranged for the providence, which may correspond with what is advised.

DOMINGO SAUSA, MASOT.

JOSE CEVALLOS.

On the same day, we, the assistant witnesses, went to the Town of Pensacola, three leagues distant from this camp, and informed D. Franciso Bomales of the providence which proceeds, and in form of it he answered that in obedience with what was required of him, he had accepted and did accept the commission, which in it is expressed, and that for its constancy he swore fidelity, and to proceed according to his legal

knowledge and understanding, singing it with us, of which we give faith.

JOSE CEVALLOS.
FRANCO BONAL, DOMINGO SAUSA.

Mr. Franco Bonales, a citizen and merchant of this town, defensor and curator of the minor children of the deceased Thomas Marshall, and of the absent heirs of his nephew Jose, named by the tribunal before your Excellency in the forms which may seem best, appear and say that having carefully examined the diligences practised by death of Mr. Thomas and Mr. Jose Marshall, I find that both successions appear to owe, on the twenty-eighth of last January, four thousand five hundred and two dollars, and five and one half rials, as it
446 appears from the sworn relation of the first executor. Mr. John Inerity, corresponding to 162, and having sold, on the third of December last, at public auction, seven slaves and one boat, these produced as it appears from the pages 56 and 57, one thousand seven hundred and twenty-five dollars, which added to the one thousand eight hundred and seventeen dollars seven and three-quarter rials of the other, which the same executor credits in the mention relations on page 62 make a total of three thousand five hundred and forty-two dollars, seven and three-quarters rials, which substracted from seven thousand and eighty-four dollars, two and three-quarters rials, that appears to be owed by the same relation on page sixty-two, there are to be paid only three thousand five hundred and forty-one dollars three rials, and demonstrating them to be the four thousand five hundred and two with five and a half, which he left (.....) your Excellency will please order the aforesaid and mentioned first executor Don Juan Inerity to present sworn relations with corresponding vouchers that may appear from the collections and payment made, and of what to each one of the creditors of both successions may be owed, deducting two dollars a month to Don. Raymond Castillo, the twenty-seven dollars, six rials, which I noted against him in the sixth clause of the testimony of the same D. Jose Marshall, as is also is likewise one hundred and twenty dollars, value of the three thousand feet of lumber, that are indicated in the same clause, doing the same with the others who the same sentiment expressed, if he received an account of what he declared to owe them, by which way the actual state of the succession may be known, and also of what may be done in favor of those for whom I do it, and for the success of all.

I beg your Excellency to order what I have requested, protesting that I proceed from necessity and not from malice.

Another, in view of what is expressed by the first executor in his writings from page 64 to page 67, and to avoid the damages which may be suffered by those, which I represent as also their creditors in regards to the escape of the negroes, your Excellency will please order bills to be posted, citing for the auction of the servants within thirty days, that they may be able to arrive.

To notice of those who wish to buy and are right now absent from this town, being able in the meantime to ascertain to what the debts sum up, so that in conformity with it a cash sale be made of these who may consider themselves (.....) in town of their (.....), which is justice that I ask, as above.

Another, your Excellency will please order D. Juna
447 Enerity to bring to this town all the (.....) that appear from the inventory 147, so that they may be sold at public auction, to avoid a loss of them, which is justice, as above.

FRANCIS BONALES.

Mr. Francis Bonals, cura*d*or and defensor of the minor heirs, and the absent to the succession of the deceased Thomas and Joseph Marshall before your Excellency, in the manner most convenient, before your Excellency, appear and say that the object and the form and the rights which suit them and notwithstanding that they have in sight the diligences to verify it, he does not make it, of my representation, as also that at the present, it is not necessary to verify and showing the principal motive of that, although he observes the law, the slaves not having seen or had notice of it, until the moment of the proceeding to this auction sale, my responsibility obliged me to make it known to your Excellency, with promise of making it in writing, as I verify it, for all of which your Excellency that in behalf of what is represented to order new estimations to be made, of the indicated servants, informing the executors to move on their part, the persons whom they may think of their satisfaction and on mine the citizen of this town, Mr. Eugenia Antonio Sierra, that it may be verified with the greater brevity as likewise, copy of the sworn relation, which I have solicited, in my writing of ten pages, for which and in hopes that you will concede to the parts which I represent.

Of your Excellency I beg to dispose and ordain as I asked such, being justice that I solicit with protest of costs, but not from malice.

FRANCO BONAL.

Pensacola, 2nd day June, 1817.

PENSACOLA, *2nd day of June,* 1817.

In view of that which this part represents and in consideration that he gives, having observed the first and that the slaves to whom he refers were valued in very low prices, not at all favorable to the minors and absent heirs, let it be made known to the executor to name the persons which they may deem competent, that a new estimation be verified in union of that which the executor must receive, requesting them likewise to present the account which they asked to give within the second day.

MASOT,
DOMINGO SOUSA,
JOSEPH CEVALLOS.

448 In the same day we made it known to the defensor, Mr. Franco Bonal, we give faith.

SOUSA. CEVALLOS.

Immediately, we went to the house of the executor, John Innerrarity and informed him of the providence aforesaid, and in answer he said, that he had no objections to proceeding to a new investigation which solicited Franco Bonal, curator and defensor of the minors and absent heirs, of the succession of Mr. Thomas and Joseph Marshall, request notwithstanding previous costs, and which result on his part he names as estimator or valuator the second executor, Christian Limbough, in what is the same Eugenia Sierra to estimate the slaves of which he expressed the same time, that although the providence has been made known to him for after says he should form another sworn relation having had the original proceedings, knowing that he had found not what to verify it, for which he begs the tribunal, to order the compliance be given this day as answer which he signs with we, the witnesses, of which we give faith.

JOHN INNERRARITY,
DOMINGO SOUSA,
JOSEPH CEVALLSO,

In the Town of Pensacola on the same day, month and year, appeared before your Honor, Eugenio Sierra, expert named by both parties, who after being informed of the commission that had been conferred on him under oath to proceed well and with fidelity, said that he needed for it to have the slaves appear in the edifice and to the greater abundance that so ap-

pears, his Excellency ordered it to be put as diligence, which he signed with said Eugenio Sierra, of which we give faith.

MASOT,
EUGENIO ANT. SIERRA.
DOMINGO SAUSA,
JOSEPH CEVALLSO,

F. Carlos, 19th day of April, 1817.

In the principal of the first and second, another that he asks posting by the assistant witnesses the bills on the usual walls with attention of crying to notice and in view of the diligence to appoint the convenient hour.

MASOT. DOMINGO SAUSA. JOSEPH CEVALLOS.

449 In the same day, menth [month] and year, we made it known to Mr. Frances Bonal, and we give faith.

CEVALLOS. SOUSA.

Immediately we verified it to John Innerrarity, faith.

LAURA. CEVALLOS.

Note: That with this are posted the bills that are disposed in the foregoing act, in the foregoing providence.

Pensacola, 29th day of April, 1817.

SOUSA. CEVALLOS.

Pensacola, 2nd day of May, 1817.

Since they are about to finish of the three more days which are solicited by the defensor and curator of the minors of Mr. Marshall to post the bills citing them to appear and verify it on Monday, 2nd day of June of the present month and year.

MASOT. DOMINGO SOUSA. JOSEPH CEVALLOS.

In the same day we, the assistant witnesses, made it known to the defensor Frances Bonal, we give faith.

SAUSA. CEVALLOS.

Immediately we verified it on the executor, John Innerrarity, and Mr. Christian Limbough, and of being informed, we give faith.

SAUSA. CEVALLOS.

In the Town of Pensacola, on the 2nd day of June, 1817, we, the assistant witnesses, went to the house of John Innerrarity, where were to be sold the belongings of the succession of the deceased Mr. Thomas and Mr. Joseph Marshall with .... conducting them to the house of the Governor at ten in the

morning, this being seen at about half past seven of it, answered that it was all right, that he will verify it at said hour, and that all may appear we put it as diligence, of which we give faith.

DOMINGO LAURA. JOSEPH CEVALLOS.

In the same the Hon. Commandant of this province, called and asked us what were the reasons why the negroes which are to be sold, are not in the hour and place that had been appointed to be sold.

In the providence of the 29th of the month and having answered to his Excellency that we did not know the
450 reason, he ordered in the act the commissioned Curator Brito, to go immediately to the house of the aforesaid John Innerrarity that he might immediately make them come to the police station in order to proceed without delay, to the ordered auction, which, notwithstanding the commission verified it, said he did not comply with the order until near half past eleven, that all may appear his Excellency ordered it to be put as diligence, which he signed it and we, the assistant witnesses, we give faith, and notwithstanding that only half an hour elapsed two families presented themselves for auction, who were not knocked down to the last bidder, considering them not to have reached their legitimate value and the defensor having requested it so.

MASOT. SAUSA. JOSEPH CEVALLOS.

Slaves Delivered to the Auctioneer.

Benjamin Marshall made of the deceased, Mr. Thomas, he having requested it. Levy, of thirty-one years. Frances, his wife, of twenty-six years. Maria, daughter of the mentioned, of three years. Edmund, of thirty-one years. Judy, wife, of thirty years. Lucinda, his son, of three years. Edward, his son, of one year and a half. Bumbre, of twenty-one years. Sold the third day of December ult., as appears on page 56-57 of the proceedings.

Mikel, of eighteen years, to the Captain Marcos de Villiers. Negress Flora, of thirty-five years, to Ramon Castillo, Juana, of twenty-six years, to Mr. Marcos de Villiers. His daughter of five years, to same. Cecelia, of twenty-nine years, to Mr. Marcos de Villiers. Linde his son, of five years, and Harry, of three years, to the same.

Slaves that have escaped since the second inventory and valuation: Cloe, of twenty-five or thirty years. Philip, his son, of eight months. Thomas, of forty-seven years. Judy, his wife, of forty-one years. Ana, his daughter, of sixteen years. Melv, his

daughter, of fourteen. Samson, of eighteen years. Peter, of forty-one years.

Five whom the American stole, and whose names are not known.

Divers Slaves.

Negress of thirty-one years, was the wife of the named Dick, and died in February of the year last named. the deceased slaves are the same which were inventoried and valued the 5th and 18th of Feb. of the years last passed, as appears from the diligence of the testamentary, on 48-49-50-51-52-53, Pensacola, 7th day of June, 1817.

451 *John Innerrarity.*

Mr. John Innerrarity, testamentary executor of the deceased Mr. Joseph Marshall, in the form which may correspond to your Excellency says: That to satisfy the wishes of Eugenio Sierra, expert named for the estimation of the slaves existing in the preceding, which has been made known, has formed the relation which he presents, specifying their ages, offices and qualities, as it has been possible to learn, and appears from the inventory and in its virtue of your Excellency, beg to consider as presented, said relation and ordain what may be just, which I swear to fidelity.

Another: Having to reform the sworn relation in the term that the defensor and curator of the minors of the deceased may solicit in the form which he solicits, on page 70 and dispose by the providence of your Excellency to recur to it, being an embarrassing operation having to reform also the acts of the curators of that succession to whom payment has been made and collect the justifying documents, beg your Excellency to allow the term which may be considered necessary so that compliance be given with the required exactness; he asks as above.

JOHN INNERRARITY.

PENSACOLA, 10th day of June, 1817.

To proceed better, transcribe to the defensor with the enclosed relation.

MASOT. DOMINGO SAUSA. JOSEPH CEVALLOS.

In the same day we made it known to John Innerrarity, through the other assistant witnesses, and of being informed we give faith.

LAURA. CEVALLOS.

In the said day we made it known to the defensor, Franco Bonal, which we give faith.

SAUSA. CEVALLOS.

Hon. Governor:

Mr. Franco Bonal, defensor and curator of the minor heirs children of Mr. Joseph and Thomas Marshall, before your Excellency in answer to a [illegible] of the 3rd by John Leonardy as executor of the first named say, that in respect to having said [illegible] the said succession with respect to their ages, effects, qualities according to the prescribed, your Excellency can order to deliver to Mr. Eugenio Sierra, expert named for the estimation of said 452 slaves so that with greater promptness verify said estimation, making bills citing your Excellency if you deem proper two days for the delivery of the sworn relation, which he must present in writing as he solicits by the answer of the said writing in which virtue of your Excellency begs to order done as he requires which is justice that he asks.

Pensacola, the 29th day of June, 1817.

FRANCO BONAL.

Pensacola, the—of June, 1817.

In consequence of what is represented by the part, and being in conformity with justice, let bills be posted in their usual [illegible] citing for auction on Saturday, fourth inst., account which will be verified from ten o'clock until half past twelve of said day, and in what refers to the solicited of which he makes asking for a term to be all owed for the presentation of the sworn relation, which he should have done already, three days will be allowed with denial of another.

MAHOT. DOMINGO SAUSA. JOSEPH CEVALLOS.

In the same day we, the assistant witnesses, went to the house of Franco Bonal and informed him how they should proceed with the possession of the succession of the deceased Thomas Marshall, the foregoing providences, we give faith.

SAUSA. CEVALLOS.

Immediately we certified the same diligence on John Leonardy, we give faith.

SAUSA. CEVALLOS.

In the Town of Pensacola, said day, month and year, before the Commandant of the Province, Hon. Joseph Masot, Colonel of the corps [corps] of artillery, appeared Eugenio Si-

erra, expert, named by both parties for the estimation of the slaves of the succession of the deceased Thomas and Joseph Marshall, and these being united in the gallery of the house of the governor, his Excellency ordered said Eugenia Sierra to proceed to the estimation of the other slaves, which he verified in the follaoing [following] form: first, the estimation of the negro George, of 40 years of age, $550, whose avocation is farming, and was valued by age.

Juana, his wife, of thirty years of age, in the sum of $400.
Ezekel, his son, of eight years, $140.
Maria or Peggy, not present.
453 Jenny, his daughter, five months, $90.
Eliza, of twenty-one, avocation farming, $450.
Dick, not present $400.
Peter, his son of three years, $390.
Paciencia, his daughter of one year, $300.
Paxi, his daughter of six years, $190.
Juana, his daughter of four years, $200.
Nathaniel, of thirteen years, without avocation $400.
The amount carried forward, $5,450.
Sum brought forward, 3,690.

Negro Mindy, of twenty-six years, field worker	$320
Susan, his daughter, of eight years	430
Felix, his daughter, of six years	240
Lidy, negro of thirty-one years, worker	400
Jerry, of two years and a half	160
Lidy, negro of thirty-one years, worker	400
Juana, his daughter, of two years	130
Total	5,450

And there not being more slaves present in said house to estimate, his Excellency ordered this act to be suspended which we sign with the said Eugenia Sierra, of which we give faith, we, the assistant witnesses.

DOMINGO SAUSA. JOSEPH CEVALLOS.

In the Town of Pensacola, the 14th day of June, 1817, being the Hon. Commandant of the province in unio [union] with the defensor and curator of the minors, as also same the executor in the house of the governor to the object with complying with ordered auction, and previous the customary calls which were give with the drum, it was begun making known to the congregated that the slaves thereafter expressed would be sold with the conditions of legitimate value, and those of America with the two hundred per cent. of the ten per cent.

without assuring of false vices and sickness, but just as they behave, that are sold arranging the title in English language, that are found by the death of the deceased six years, and this as if that.

First was cried the negro named John, and after several bids and raises, without anybody offering more than three hundred and fifty dollars, that Elias Loid offered, and it being considered by the executor and defensor, that their estimation was too much and that it would never reach to two thirds of it, they resolved that he be knocked down to the said Elias Loid in three hundred and fifteen ($315).

454 Immediately were presented for the same end, negro Juana and his daughter Jenny. After bids and raises they were knocked down to sain Loid in $329.

In the same way it was knocked down to the mentioned Loid one negro boy named Exekel in $190.

Consecutively was knocked down to the aforesaid Loid one negro girl named Patience in $295, he being the best bidder.

Consecutively was cried the negro Eliza, and after many bids and raises, it was knocked down to the Liutenant [Lieutenant] Mr. Carlos de Villiers, as best bidder in $495.

And being past said hour Hon. Commandant ordered the act suspended to continue it at four of the evening, for which it may appear his Excellency ordered it to be put as diligence that signed said executor and curator and we, of which we give faith.

Sum brt. ford., $1,584.

MASOT, FRANCO BONAL,
DOMINGO SAUSA. JOSEPH CEVALLOS.

In the mentioned day being the hour named and united in it, so that being cited the expressed executor and curator, and the usual calls having been made was cried out, by the auctioneer program, of Joseph Cartes, the negro named Pegin, and in spite of several bids and raises, being the greatest bidder the mentioned Mr. Carlos de Villiers, he was knocked down to him in $385.

Immediately was cried out the negro Dick, and was knocked down to best bidder, Mr. T. B. Reed, $361.

Amt. brt. ford., $2,330.

Consecutively, in the same way was cried out by the auctioneer Negro Lidy and her three children, Paxi, of 6 years, Juana, of foru [four] years, and John, of two years, were knocked down as best bidder to T. B. Reed in $125.

In the same way was cried the effect of six years and Teri, of two years and half, and were knocked down to the mentioned Mr. Franco de Villiers in $475.

Immediately was knocked down the negro Susana, to the same Mr. Carlos de Villiers, in $445.

In the same act was cried out the negro Felix, of eight years of age, and was knocked down to Mr. Franco Vidal as best bidder in $25.

$4,725.

455 And there not being more slaves to sell of the belongings of the succession, his Excellency ordered this finished that signed with the executor and curator and we, of which we give faith.

MASOT,
DOMINGO SAUSA,
FRANCO BONAL,
JOSEPH CEVALLOS.

PENSACOLA, 16*th of June*, 1817.

In view that information has this moment been given by the retired Lieutenant Joseph Norigo that the negro named Liby had just told him that the said Elias Loid had taken with him several negroes of the deceased Mr. Thomas and Joseph Marshall and that he knows there [their] whereabouts, I proceed and take an instructive declaration from said negro, serving to the effect as interepreter, the ensign, Mr. Buena Dubrinel, with the same actual witness.

MASOT. DOMINGO SAUSA. JOSEPH CEVALLOS.

In the proper day, month and year, before your Excellency appeared the negro named Libay, of whom through the interpreter named, oath was received, which he made through this previous to that which the said ensign made under the qualification to say the truth about what he should know, and might be asked and through him the holder of the information said to his Excellency, that he to-day notified said lieutenant that the inhabitant Elias Loid had taken with him about two months ago, six slaves, 3 males and 3 females, taking likewise, the informer as far as twenty miles from the town, with the object of passing said slaves over the river Escambia, returning immediately to the habitation of the said Loid, to take care of it and to answer.

Immediately said slave of the said Loid being asked to whom does he act, said that as Loid says he is his slave, but that he does not acknowledge any other owner, than the half-breed Benjamin Marshall, was asked if he knew where at present were the slaves which he says that the said Elias Loid took

with him, he said that he heard one night Loid say in speaking to his wife and some American that he had sold the six slaves, part of them in Tennessee, and part elsewhere, or in him or likewise he wish to take with him the informer himself, so that after getting some more in this town and particularly in the military companies of Havanna to be able to pay his owner then or to sell them and he answers, asked if he knew the Americans or their names, that cites, he said that he
456 knew Albert Bolden, the obligation of Joseph Marshall $150, to pay ten cows with the calves, two mules $150, one sick cow, $10; things and clothes taken from of the habitation, $79.5; 389.5.

I, Joseph Fiet, nephew or kin of Col. Phillips, and that ignore his whereabouts, say that I have not informed before, for not having found satisfactory person to whom it might be committed, begging the tribunal to consider, that the said Loid has not returned to take him since this declaration, which he has made against him, is all that he has to the said is the truth under the oath that I have given which was signed and ratified by the expert interpreter of twenty-eight years of age, and did not sign for not knowing how, then did it, Hon. Interpreter, and we, of which we give faith.

MASOT. DOMINGO SAUSA. JOSE CEVALLOS.

Pensacola, 16th day of June, 1817.

Let the note that the defensor, Mr. Franco Bonal, has presented be aggregated, and let this and the executor be cited, that they may expound in view of the declaration and said nots [note] what they may deem just.

MASOT. DOMINGO SAUSA. JOSEPH CEVALLOS.

Pensacola, 17th day of June, 1817.

In view of what is represented by these parties let the Elias Loid be safely arrested and communicated in the Royal prison, as also the negro named Levy; let the minister of justice inquire the whereabout of the Americans named Baldwin and Jose Fiet, citing to appear in my tribunal at four of the evening, requesting in the same way to the executor to present without delay the sworn relation that he has solicited and the slaves, so that with the greater brevity it be liquidated that is indebted, and deposited in view of the bills which have been verified that the sale of the effects were of this succession.

MASOT. DOMINGO SAUSA. JOSEPH CEVALLOS.

In said day we made it known to Franco Bonal, we give faith.

SAUSA, CEVALLOS.

Immediately we verified it on John Innerrarity and Christian Limbough, we give faith.

SAUSA, CEVALLOS.

Pensacola, 19th day of June, 1817.

457 In view that it has been informed by the defensor and execotir [executor] that the furniture are of very poor value, that the greater part of it are worthless, it is permitted to verify sale of them in the house of the commissioned executor, in effect the assistant witnesses beforehand advising for Saturday, the 21st.

DOMINGO SAUSA.

In the Town of Pensacola, 21st day of June, 1817, we, the Innerrarity for effect of complying with the foregoing providence and united in it the executor and defensor, the auction sale of the designated effects was begun. First was cried out three tables and previous the calls of the drum, at the cry of the auctioneer, 3 wooden chairs, together, which, after many bids and raises, were knocked down in $5. Levina Melita.

Immediately was cried out a bellows and anvil, a screw, pincers, a lock and two pounds of iron, which in the same manner was knocked down to Carlos de Villiers in $34. Immediately was cried out for the same reasons, 8 old axes which was knocked down to said Carlos de Villiers $1. For the same reasons were brought and cried out 3 iron plows, one frying pan, 2 axes, all of which was knocked down to the best bidder, to the mentioned Carlos de Villiers in $2, and likewise was cried a large hand saw and four hatchets, which were knocked down to the aforesaid Carlos de Villiers in $6.

46.4 ..

and not having any other thing to knock down, this act was finished, which signed, the executor, curator and defensor and we, of which we give faith.

DOMINGO SAUSA. JOSEPH CEVALLOS.

458 [*Clerk's Certificate.*]

In the Circuit Court of the United States, Northern District of Florida.

NORTHERN DISTRICT OF FLORIDA, *ss.*

I, F. W. Marsh, Clerk of the Circuit Court of the United States for the Northern District of Florida, hereby certify that the foregoing is a true and correct copy of a translation from

the original Spanish into English of a certain document on file in my said office, being in the Bill of Exceptions as signed by the Judge of said Court, in the case of Florida McGuire and Matilda Caro *vs.* W. A. Blount, William Fisher, *et als.*, as prepared under my directions by a Spanish scholar, who has been duly sworn as to the truth and correctness of the same, the said translation embracing the original Spanish testament of Thomas and Joseph Marshall, as contained in said Bill of Exceptions.

Witness my hand and the seal of said Court at the City of Pensacola in said district this 4th day of November, A. D. 1902.

[SEAL] F. W. MARSH, *Clerk.*
CHARLES H. LEDNUM, *Clerk.*

Filed Nov. 17, 1902.

459 Motion of Defendants in Error to Strike Bill of Exceptions.

United States Circuit Court of Appeals, Fifth Circuit. No. 1202 Florida McGuire, *et al.*, *versus* William A. Blount, *et al.*, filed January 2, 1903.

United States Circuit Court of Appeals, filed January 12, 1903. CHARLES H. LEDNUM,
Clerk.

460 United States Circuit Court of Appeals, Fifth Judicial Circuit, at New Orleans.

FLORIDA MCGUIRE and MATILDA CARO
versus
WILLIAM FISHER, WILLIAM A. BLOUNT, *et al.* } No. 1202.

Writ of Error, United States Circuit Court, Northern District of Florida.

1. The defendants in error move to strike the paper copied in the transcript, purporting to be a bill of exceptions, because:

The said paper though signed by the Judge of Circuit Court a quo, in order to expedite plaintiffs in error in the perfection of their writ of error, was placed by the said Judge in the hands of one E. T. Davis, one of the attorneys for complainants in error, with the direction that it should not be effective as a bill of exceptions until certain points of differences then pending between the counsels for the respective parties as to what said bill should contain, should be determined by the said Judge. That thereafter the attorneys for the respective parties

adjusted all of such differences but two, the said E. T. Davis yielded to all of the contentions of the attorneys for defendants in error, and striking out many parts of the said alleged bill of exceptions so signed by the said Judge, and omitting many pages which had been therein inserted before the said Judge had signed the same, and thereupon the attorneys for the parties resubmitted the same to the said Judge, and said E. T. Davis returning the paper to him in order that he might decide upon the said two contentions still open between the attorneys for the parties; that thereupon the said Judge decided such contentions in favor of the defendants in error, and redelivered the said paper to the said E. T. Davis with a direction to him that it should not be used as a bill of exceptions until certain papers, covered by the said two contentions of the attorneys for defendants in error, should have been inserted therein; but, that the said E. T. Davis without inserting in, or in any wise making the said papers any part of the said alleged bill of exceptions, and knowing that the said papers had not been inserted or included, and intending not to insert them, placed the said alleged bill of exceptions with the Clerk
461 of the said Court, and demanded and procured against the protest of the attorneys of the defendants in error, and the command of the Judge, that the said alleged bill of exceptions should be included in and made a part of the transcript of the record which is in this Court; and that the said alleged bill of exceptions does not contain the said papers ordered by the said Judge to be inserted therein.

2. That the paper purporting to be a bill of exceptions, a copy of which is in the transcript of the record of this Court, is not the same paper signed by the Judge of the Court below, but that the paper signed by him has, since it was signed by him, been materially altered by the said E. T. Davis, one of the attorneys for the plaintiff in error, by inserting therein certain material papers, and by omitting therefrom certain material matters; and that the paper in the transcript, purporting to be a bill of exceptions, is not the paper signed by the said Judge, but has been altered as aforesaid.

3. That the said paper, purporting to be a bill of exceptions, has not been approved by the Judge of the Court below, and was filed in said Court, and inserted in the transcript of the record now on file in this Court without his consent, and against his express command.

W. A. BLOUNT,
A. C. BLOUNT, Jr.,
BLOUNT & BLOUNT,
Attorneys for Defendants in Error.

[Indorsement:] No. 1202. Florida McGuire, *et al.*, *vs.* William A. Blount, *et al.* Motion of defendants in error to strike bill of exceptions. U. S. Circuit Court of Appeals. Filed Jan. 2, 1903. Charles H. Lednum, Clerk. Blount & Blount, Pensacola, Fla.

462 Certificate of Hon. Chas. Swayne on Motion to Strike Bill of Exceptions.

United States Circuit Court of Appeals, Fifth Circuit. No. 1202. Florida McGuire, *et al.*, *versus* William A. Blount, *et al.*, Filed January 2, 1903.

U. S. Circuit Court of Appeals, filed Jan. 12, 1903.

CHARLES H. LEDNUM,
Clerk.

463 In United States Circuit Court, State of Florida.

FLORIDA MCGUIRE, *et al.*,
versus
WILLIAM FISHER, *et al.*

I, Charles Swayne, Judge of said Court, do hereby certify that I have read the affidavit of William A. Blount, dated December 13, 1902, relating to the proceedings to settle the bill of exceptions in this case. That the letters attached to the same purporting to be signed by me were signed and sent by me, and that I received the originals purporting to have been sent by him, of which copies are attached to the said affidavit. That before June 16, 1902, I received from E. T. Davis, one of the counsel for plaintiffs in error in this case, a proposed bill of exceptions, and from Blount & Blount, objections to the same. That I disposed of such objections on or about June 16, 1902, sustaining all of them, and directing the said Davis to make his bill of exceptions conform to the said objections. That the said Davis, in the latter part of August, presented the said bill of exceptions to me as conforming to the directions which I had given, and I, desiring to expedite the making of the said bill, and assist the plaintiffs in error as much as possible in so doing, signed the same, and sent it to the said Davis by mail, I then being at Guyencourt, Delaware. I, however, wrote to him that if there were any differences between him and Blount & Blount, attorneys for defendants in error, the signing of the bill by me was subject to the adjustment of such differences, and that he was not to use the same until such differences, if any, had been adjusted, and directing him that unless he and the said Blount should agree

fully, to return the bill of exceptions to me again, and I would pass on the differences. He did so send it to me, and the said William A Blount sent to me his objections thereto, and the said Davis his replies to such objections, and I decided as I had decided in June, 1902, that the bill did not contain all the papers which had been offered at the trial, and which should be inserted in the bill, and I returned it to the said Davis with instructions to insert the plats and protocols mentioned in the last exceptions of Blount & Blount before using the bill, and I supposed that such insertions had been made until I
464 learned from Blount & Blount and the Clerk of this Court that the said Davis insisted that because he had in his possession a bill of exceptions signed by me, he was entitled to use it, although it did not contain the papers which he had been instructed to insert in it, and that he had procured that the Clerk should insert it without such papers. The position of the said Davis with reference to the matter is shown by his letter to me, which is hereto attached, marked Exhibit "A."

In witness whereof, I have hereunto signed my name and caused the Clerk of said Court to affix the seal thereof, this December thirteenth, nineteen hundred and two.

[SEAL] CHAS. SWAYNE, *Judge.*

A.

PENSACOLA, FLA., ...

Hon. Charles Swayne,
Wilmington, Del.

Dear Sir:

After further investigation of the law, I find that it is now too late to amend, change or alter the bill of exceptions, after they are signed and filed, the defendants can apply for a writ of certiorari, to the Circuit Court of Appeals, and if their exceptions are well taken, the Court will order such documents as they refer to, to be made up and included in the record. I cite you "Mich. Ins. Bank *vs.* Elder, 143 U. S. 298;" and also Sutherland *vs.* R , 57 Fed. Rep. 467.

Yours very truly,

E. T. DAVIS.

[Indorsement:] No. 1202. Florida McGuire, *et al.*, *vs.* Wm. A. Blount, *et al.* Certificate of Hon. Charles Swayne on Motion to Strike Bill of Exceptions. U. S. Circuit Court of Appeals. Filed Jan. 2, 1903. Charles H. Lednum, Clerk.

466 **Affidavit of W. A. Blount on Motion to Strike Bill of Exceptions.**

United States Circuit Court of Appeals, Fifth Circuit. No. 1202 Florida McGuire, *et al., versus* William A. Blount, *et al.* Filed January 2, 1903.

United States Circuit Court of Appeals, filed January 12, 1903. CHARLES H. LEDNUM,
Clerk.

467 **United States Circuit Court of Appeals, Fifth Judicial Circuit, at New Orleans.**

FLORIDA MCGUIRE and MATILDA CARO
versus
WILLIAM FISHER, WILLIAM A. BLOUNT, *et al.* } No. 1202.

Before the subscriber personally appeared William A. Blount, who being duly sworn says, that he was one of the counsel for the defendants in error in this cause on the trial thereof in the Court below, that the said trial took place on the .... day of ....., 1902, before a jury, which resulted in a verdict for the defendants, defendants in error herein; that in April, 1902, E. T. Davis, one of the attorneys for the plaintiffs below, plaintiffs in error herein, presented to affiant a proposed bill of exceptions in this case; that on April 23rd affiant delivered to the said Davis objections to such proposed bill, upon the ground that more than thirty documents offered on the trial had been omitted, including certain plats and protocols. A copy of the said objections is hereto attached and marked Exhibit "A." The plats omitted are those mentioned in objection twelve (12), and the protocols in objection eighteen (18). That thereafter, on May 28th, 1902, the said E. T. Davis presented to affiant an amended proposed bill, in answer to which the affiant filed objections upon the ground that there were still many papers and documents, more than twenty in number, which were omitted, including the plats and protocols mentioned. A copy of said objections is hereto attached and marked Exhibit "B." The plats mentioned are included in objection nine (9), and the protocols in objection twelve (12). On June 16th, 1902, the said Judge heard both parties, as to the said objections, and sustained them all, and ordered that the papers objected to as omitted should be inserted in the bill of exceptions; that thereafter the said E. T. Davis presented an amended bill of exceptions to which the affiant objected on the ground that a large number of papers and documents, including

the plats and protocols above mentioned, were not, but should be included, and that certain language therein was erroneous and should be changed. A copy of such objections is hereto attached and marked Exhibit "C," and made a part hereof.

468 The plats and protocols are referred to in the third (3) and fourth (4) objections from the last.

Upon the trial there had been offered an original Spanish protocol which was read in evidence before the jury. Instead of making a copy of this, the proponent of the said bill had caused a translation into Spanish from the English translation, also used on the trial, to be made and inserted in the record. The fifth (5) objection from the last in Exhibit "C" refers to this.

That without further submission of the bill of exceptions to the affiant, or any direction from the defendants in error, the said Davis transmitted the proposed bill of exceptions to the Hon. Charles Swayne, who was then in Guyencourt, Delaware. Affiant, after the transmission of the proposed bill of exceptions to the Judge, and after affiant's receipt of replication (so called) by the said Davis to affiant's objections, sent to the said Davis a letter dated Aug. 25th, 1902, suggesting that the bill of exceptions should have been submitted to him before being sent to the Judge. A copy of this letter is attached as Exhibit "D," and copy of the letter to the said Judge, transmitting a copy thereof, is attached as Exhibit "E."

Thereafter the said Judge signed the proposed bill of exceptions as presented, and returned the same to the said Davis on August 26th, 1902, and wrote to the said Davis a letter which he transmitted to affiant to be handed to the said Davis, and which was transmitted by affiant to the said Davis on the day of its receipt, to-wit: Aug. 29th, 1902. A copy of the said Judge's letter to affiant is hereto attached and marked Exhibit "F," and a copy of affiant's letter to said Davis is attached and marked Exhibit "G."

Affiant has not a copy of the said Judge's said letter to the said Davis, but, it said, substantially that the bill of exceptions was signed by the said Judge subject to an adjustment of any differences between the said Davis and affiant touching the contents of the said bill.

The said Davis has, of course, the letter and can produce it.

On, or about, Sept. 1st, 1902, affiant received a letter from the said Judge, dated Aug. 29th, 1902, informing affiant that he had written to the said Davis, that unless he and affiant agreed fully, to send the bill of exceptions again to him (the said Judge), and that he would pass on the differences between affiant and the said Davis. A copy of said letter is hereto at-

tached and marked Exhibit "H." Affiant has not, of course, a copy of letter to the said Davis, but the said Davis can produce it. And affiant also received about Sept. 5th, 1902,
469 a letter from the said Judge, dated Sept. 3rd, 1902, which is hereto attached, marked Exhibit "I."

Thereafter, on Sept. 4th, 1902, the said Davis brought to affiant the said proposed bill of exceptions, with the request that he and affiant should go over and endeavor to adjust their variant contentions. After going over the bill the said Davis yielded to all the objections of the affiant except two, which related to the plats and protocol before mentioned; he thereupon changed certain parts of the bill of exceptions as it then stood by striking out parts thereof, as is shown by his letter to the said Judge dated Sept. 5th, 1902, attached hereto as Exhibit "J." The said Davis proposed to submit these two matters to the Judge, to which affiant consented, although in June, 1902, the Judge had decided that these plats and protocols should be inserted in the bill of exceptions. Accordingly, the said Davis sent the bill to the said Judge, who was then at Guyencourt, and affiant wrote on Sept. 5th to said Judge, a letter, a copy of which is attached and marked Exhibit "K." A copy of the objections mentioned in the letter is attached and marked Exhibit "L." Upon the receipt of the proposed bill of exceptions the said Judge decided that the plats and protocols heretofore mentioned, should be inserted in said bill, and so wrote to affiant in a letter dated Sept. 12th, 1902, in which he said that he had "returned record to Mr. Davis, with instruction to insert the plats and protocols before using it." The said letter is hereto attached as Exhibit "M." Affiant, of course, has not the letter to the said Davis, but he, the said Davis, can produce it. Affiant attaches copies of two other letters written by him to said Davis Sept. 2, 1902, and Sept. 5, 1902, marked Exhibits "X," "Y."

That upon the receipt of the said bill of exceptions the said Davis, without inserting the said plats and protocols therein, placed the same in the hands of the Clerk of the Circuit Court, and demanded that the same should be copied as it stood in the transcri-t, although he knew that it did not contain the said plats and protocols, and although affiant protested, to him, the said Davis, against the copying of the said bill of exceptions until the said plats and protocols were inserted; and the said Clerk copied the said transcript of the bill of exceptions, which is before this Court, in its state as altered, after the said Judge had signed the same, and without the insertion of the said plats and protocols; such copying being done against the protest of the affiant. The said plats and protocols have not been inserted

in the said bill of exceptions, and are not now in the
470 transcript of the record before this Court.

W. A. BLOUNT.

Sworn to and subscribed before me this 13 day of Dec., A. D. 1902.

[SEAL] A. C. BINKLEY,
Notary Public.

A.

In United States Circuit Court, Northern District of Florida.

FLORIDA McCUTHE and MATILDA CASO
vs.
WILLIAM FISHER, *et al.*

Objections to Bill of Exceptions Proposed by Plaintiffs in This Suit.

It will be remembered that this case went off on a direction of a verdict by the Judge, and in order that it may be properly reviewed, the Court above must have all the testimony given upon the trial below, before it, as otherwise it would be unable to tell whether the Court was justified in its peremptory direction or not.

There are omitted from the bill of exceptions the following papers—possibly others—but the following papers upon the face of the proposed bill of exceptions to have been offered, and yet are not set out in the bill. The defendants insist that each and every one of them shall be set out in extenso, to-wit:

1. Original Spanish will of Gabriel de Rivas, and the probate thereof.
2. Certified copy in Spanish of such will and probate.
3. Translation of such will and probate.
4. Original Spanish proceedings by Maria Rivera for the sale of Edward Towns & Co. of a lot in the City of Pensacola.
5. Certified copy in Spanish of such proceedings.
6. A translation of such proceedings.
7. Original Spanish proceedings showing the sale of the property in controversy.
8. A translation thereof, in English.
9. Page 332 of Book A of the proceedings of the commissioners for the settlement of land claims in West Florida.
10. Page 333 of the same book.
11. Statement by Jos. E. Chew, keeper of the public
471 archives, under his hand and seal, being an abstract of the property in controversy.

22. The plats certified by Joseph E. Cave, keeper of such archives, of the lands confirmed by the commissioners, including the land in controversy.

23. Page 248, volume 6, American State Papers.

24. Act of Congress, April 23, 1828, page 336, vol. 6, U. S. Statutes at large.

25. Certified copy of deed from Gregorio Cave to Jas. Fitzsimmons, Samuel Smylie and John Claiborne.

26. Certified copy of deed from Jas. Fitzsimmons to John Claiborne.

27. Certified copy of deed of partition between John Claiborne, Louis Duponeil de Bienne and Laurent Millaudon.

28. The protocols in the original Spanish, ten or twelve in number, found with the protocol showing the testamentary proceedings divesting the property in controversy out of Maria Rivera, executrix, and vesting it in Gregorio Cave, such originals having been offered together with the other papers above mentioned.

29. Spanish Grant to Gabriel De Rivas of the property in controversy with the map or plan annexed thereto.

30. The plan or map of the New City of Pensacola made by Geo. E. Chase, offered in evidence.

31. The map or plan of the New City of Pensacola made by Harding & Lee, offered in evidence.

32. Certified copy of the petition of A. V. Cave, to the Circuit Court of Escambia County, Florida, to assert to him the property known as the Chase property.

33. Decree under such petition.

34. Certified copy of bill in chancery in Escambia County Circuit Court, in the case of W. H. Davidson, et al., vs. E. C. Patterson, et al.

35. Answer in the same case.

36. Decree in the same case.

37. Deed from Runyan heirs to Florida Railway.

38. The various deeds designating the title from Smylie, Claiborne and others to the trustees of the Pensacola City Co.

39. The deed from the said trustees to the Pensacola City Company, a corporation.

40. The various deeds introduced in evidence by Thos. C. Watson, Wm. A. Blount and William Fisher, showing the assignment of title to portions of the land in controversy from the Pensacola City Co. to them, and showing the instruments under which they claimed.

(Signed) BLOUNT & BLOUNT,

Attorneys for William Fisher and others.

472 B.

In United States Circuit Court, Northern District of Florida, at Pensacola.

FLORIDA MCGUIRE and MATILDA CARO
vs.
WILLIAM FISHER, *et al.*

The defendants make the following objections to the bill of exceptions presented to them through their attorneys, Blount & Blount, on May 28, 1902, to-wit:

1. The abstract mentioned on page 22, made by J. E. Caro, should be inserted in the record. The statement that this was not produced is not correct; it was produced, offered in evidence, and is now in the hands of the surveyor general.

2. The will and probate of Gabriel de Rivas mentioned on page 73 was produced, offered in evidence, and should be in the record. It is now in the hands of the surveyor general.

3. The proceedings relating to the sale of the lot in 1808 by Maria Moreno was produced and offered in evidence, and should be in the record. It is mentioned on page 96 of the record. It also is with the surveyor general.

4. On page 139 is a translation of the proceedings to sell this tract of land. It purports, however, in the bill of exceptions to be proceedings to sell a lot of land mentioned, and which was actually sold in 1808.

5. The proceedings mentioned on page 195 being proceedings by Maria Moreno before the Spanish governor for the sale of these particular lands, as offered in the original and should be in the bill of exceptions. It is in the hands of the surveyor general.

6. On the same page the bill of exceptions purports to set out a translation of these proceedings, but it is not set out.

7. Pages 332 and 333 of Book A of commissioners' proceedings mentioned on page 196 of the bill of exceptions was produced, offered in evidence and read to the jury, and should be in the bill of exceptions. This book is in the possession of the surveyor general.

473 8. The original abstract made by J. E. Caro, mentioned on page 196 of the bill of exceptions was produced in evidence and read to the jury, and should be in the bill of exceptions. It is with the surveyor general.

9. The plats by J. E. Caro of confirmed grants were produced, offered in evidence and exhibited to the jury, and

should be in the record. They are referred to on page 196 of the bill of exceptions. They are with the surveyor general.

10. The confirmation to Chabeaux shown on page 103, 4 American state papers, was produced, offered in evidence and read to the jury and should be in the bill of exceptions. It is referred to on page 196 of the bill of exceptions.

11. The act of Congress of April 22, 1826, 4 Statutes at Large, page 158, was produced, offered in evidence and read to the jury, and should be in the record. It is easily accessible. It is referred to on page 196 of the bill of exceptions.

12. On page 203 appears a statement that Mr. Blount, counsel for defendants, offered a protocol and gave the names of certain notaries. This is entirely incorrect. There were eight or ten protocols offered and exhibited to the jury. Mr. Blount did not give the names of the notaries, but gave Thomas Marshall and perhaps Joseph Marshall as the names of beneficiaries under proceedings contained in the protocol. They were offered as showing the authenticity of the proceedings relating to this particular tract of land because found at the same place, signed in large part by the same persons, and having the same general appearance. They should be in the bill of exceptions.

13. The George E. Chase plan referred to on page 211 was offered in evidence and exhibited to the jury and should be in the bill of exceptions.

14. The Harding & Lee plan referred to on page 202 of the bill of exceptions was offered in evidence and exhibited to the jury, and should be in the bill of exceptions.

15. The agreement with Caro read by Mr. Fisher to the jury was offered in evidence and should be in the bill of exceptions. It is referred to on page 213 of the bill of exceptions.

16. The attorneys for the defendants have not verified
474 the several documents and the testimony set forth in the bill of exceptions, preferring to postpone this onerous task until all the documents which should be in the record are inserted in the bill of exceptions.

(Signed) BLOUNT & BLOUNT,
Attorneys for Defendants.

C.

In United States Circuit Court, Northern District of Florida, at Pensacola.

FLORIDA MCGUIRE, *et als.*,
vs.
WILLIAM FISHER, *et als.*

The defendants except to the bill of exceptions as presented to them July .... 1902, for the following reasons:

Page 21. Before the words "went into possession," about the middle of the page, should be inserted the word "never."

Page 24. The record in the suit of A. V. Caro *vs.* Samuel Jardon and N. Thurston was offered in evidence, but is not in the record. It can be found in the office of the Clerk of the Circuit Court of Escambia County, Fla.

Pages 35 to 41, inclusive, purport to be copies of bill of complaint, but are copies of final decree.

Pages 53 to 58 purport to be a deed, but are an answer in chancery.

Page 66. The deed from the Pensacola City Co. to Chas. Ahrens is not, but should be, in the record.

Page 36. There should be this statement inserted: "It was agreed between the attorneys for the plaintiffs and for the de- of R. L. Scarlett, surveyor general of the State of Florida, that the various Spanish documents introduced by each side came from his custody as surveyor general of the United States for said State, and that he was the proper custodian thereof."

Page 75. The paper purporting to be a bill and answer is not such, but an order appointing a receiver.

475 Page 168. The date "1873" should be changed to "1783."

Page 215. The proceedings of the land commissioners, though offered in evidence, are not set out in the record.

Pages 120 and 121. These constitute a deed from Maria Moreno to Townes & Co., and should not be interpolated between two parts of the proceedings by Maria Moreno to sell the property.

Page 122 should follow page 120 without the written caption.

Pages 115 to 125. The translation on these pages (eliminating 120 and 121) is omitted.

Pages 127 to 157. The paper set out on these pages is not a copy of the original offered in evidence, but is a translation from the English translation offered in evidence back into

Spanish, having been evidently made by some person in employ of plaintiffs in error. We insist upon a copy of the original.

Page 224. The whole of the plats and explanations, etc., of Jos. E. Caro are not in the record, but should be.

Page 239. Not only were the protocols relating to Thos. Marshall and Jos. Marshall offered, but eight or ten others, which are not, but should be, in the bill of exceptions.

Page 314. The word "proved" should be stricken out and the word "claimed" inserted.

Page 319. The words "that land" should be changed to "the land in controversy."

(Signed) BLOUNT & BLOUNT,
Attys. for Defts.

476 D.

Aug. 25, 1902.

FLORIDA MCGUIRE and MATILDA CARO
vs.
WILLIAM FISHER, *et al.*

E. T. Davis, Esq.,
City.

Dear Sir:

I have been over your replication to the exceptions of the defendants in this case to the bill of exceptions. It is impossible for me, without having the bill of exceptions in my hands, to say whether the amendments to which you allude in your replication have been made in such form as to meet my former objections. For instance, in the 2nd, 3rd, 4th, 5th, 6th and other replications, you say that documents which I required to be inserted have been inserted in their proper place in the record. Of course, I should have before me the bill of exceptions, so as to see whether in my opinion the objections have been met. There are other matters which the Judge will have to dispose of because at issue between us, and I should have the bill of exceptions in order to refer to the pages where the omissions occur. For instance, your 14th and 15th replications say that all that were offered and read are set out in the record in their proper place. I should have before me the bill of exceptions in order to point to the Judge the particulars of my objections.

I see no way of settling the matter except to submit to me the bill of exceptions before submitting it to the Judge.

E. T. Davis, No. 2, 8 | 25 | 02.

I return one of the copies of replication which you handed me, and retain the other, as I presume you intended.

Yours very truly,

(Signed) W. A. BLOUNT.

E.

Aug. 25, 1902.

FLORIDA MCGUIRE and MATILDA CARO
vs.
WM. FISHER, *et al.*

Hon. Chas. Swayne,
Guyencourt, Del.

Dear Sir:

Mr. E. T. Davis has presented to me a replication, as
477 he calls it, to the exceptions which I made to the bill of exceptions. I beg to enclose copy of letter which I have written him, which explains my position in the matter.

Yours very truly,

(Signed) W. A. BLOUNT.

Enc.

F.

Judge's Chambers, United States District Court, Northern District of Florida.

Charles Swayne, Judge.

GUYENCOURT, DEL., 8 *Mo.* 26th, 1902.

W. A. Blount, Esq.,
Pensacola, Fla.

Dear Sir:

I inclose your objections and Mr. Davis' replies in re bill of extns. in Fla. McGuire case. Also copy of letter I send to Mr. Davis, that explains the matter.

Yours truly,

CHAS. SWAYNE.

G.

Aug. 29, 1902.

FLORIDA MCGUIRE
vs.
WM. FISHER, *et al.*

E. T. Davis, Esq.,
City.

Dear Sir:

Enclosed please find a letter to you from Judge Swayne, which he asked me to hand you, together with other papers contained in a letter to me, received this morning. I have written Judge Swayne, objecting to his signature to the bill of exceptions without having verified or disproved the objections which I made, and without being convinced that all of the papers used at the trial were copied into the bill of exceptions.

Yours very truly,

(Signed) W. A. BLOUNT.

Encs.

H.

Judge's Chambers, United States District Court, Northern District of Florida.

Charles Swayne,
Judge.

GUYENCOURT, DEL., 8 *Mo.* 29th, 1902.

W. A. Blount, Esq.,
Pensacola, Fla.

Dear Sir:

I have yours of 25th and have written Mr. Davis in this mail. Unless you agree fully to send me the bill of extns again and I will pass on your differences.

Yours truly,

CHAS. SWAYNE.

I.

McGuire
vs.
Fisher, *et al.*

Judge's Chambers, United States District Court, Northern District of Florida.

Charles Swayne,
Judge.

Guyencourt, Del., 9 *Mo.* 3d, 1902.

W. A. Blount, Esq.,
Pensacola, Fla.

Dear Sir:

Yours of 29th at hand in re bill of exs. Fla. McGuire case. I had already written Mr. Davis not to use said bill until you and he agreed or I had an opportunity to pass upon your contentions. I believe I will be able to hold up the case in the Court of Appeals if he does not regard my request, but attempts to use the bill in its present shape.

Very truly yours,
CHAS. SWAYNE.

J.

E. T. Davis,
Attorney and Counsellor at Law,
No. 14 1-2 E. Government Street.

Pensacola, Fla., 9|5|1902.

Hon. Charles Swayne,
Guyencourt, Del.

Dear Sir:

I was away from the city when your letter, requisting me to submit the bill of exceptions to Mr. Blount, and then forward them to you, came; in fact, after receiving the bill of
479 exceptions, I went immediately and filed them, and went over to New Orleans to prepare the writ of error, and after that being done I made my return with the expectation of having it perfected, but upon receiving your letter I saw that the matter had taken a very unexpected turn, and I then proceeded to do as the Court had requested. This is the cause of my delay in answering your letter. I deeply regret this delay and hope that we will not be debarred by it.

I am, yours very truly,
E. T. DAVIS.

P. S. You will find the exceptions now made by defendants, also replied to, in parenther, which was before you and which replication you will recognize as the one before you when you approved the bill. You will find that no changes have been made in the bill except the words "proved" and the *the* words "that land," and rather than delay I submitted to Blount's contention.

X.

Sept. 2, 1902.

FLORIDA MCGUIRE, *et al.*,
vs.
WM. FISHER, *et al.*

E. T. Davis, Esq.,
City.

Dear Sir:

I have a letter from Judge Swayne under date of 29th ult., in which he says that he has written you that unless we can agree fully as to the bill of exceptions in this case, to return it to him and he will pass on our differences. I will be glad to have the bill of exceptions before it is returned to him.

Yours very truly,

(Signed) W. A. BLOUNT.

Y.

FLORIDA MCGUIRE, *et al.*,
vs.
WM. FISHER, *et al.*

E. T. Davis, Esq.,
City.

Dear Sir:

I herewith beg to return you the bill of exceptions handed to me yesterday, with my objections thereto. You will note that the changes which you have made caused an elimination by me of all objections but two.

Yours very truly,

(Signed) W. A. BLOUNT.

Enc.

480 K.

Sept. 5, 1902.

FLORIDA MCGUIRE, *et al.*,
vs.
WM. FISHER, *et al.*

Hon. Chas. Swayne,
Guyencourt, Del.

Dear Sir:

Mr. E. T. Davis brought to me yesterday the bill of exceptions in this case. He and I went over it, and he has yielded to all of my objections except those which he has numbered fourteen and fifteen in his "replication," and which are to be found on pages 234 and 239. For the purpose of having this before you, I repeat them, and enclose you a copy.

As I have said before, this writ of error is from a judgment which was rendered upon a verdict directed by the Court, and it is necessary that all testimony that went before the jury should go into the record.

The attacks made by the plaintiff upon the Spanish document divesting the title out of Maria Moreno as executrix, and vesting it in Gregorio Caro, were, in general terms, two-fold: the first relating to the form, and the second to the authenticity of that document. For the purpose of showing the authenticity, the plats embraced in exception 14 and the protocols embraced in exception 15 were offered by us, the purpose being to show that the instrument which we offered was not fabricated, but that they were found in the same possession Swayne No. 2. 9|5|02.
and in the case of the plats, under the same cover with other papers of like kind signed by the same people, and thereby to furnish one of the strongest evidences of authenticity to the evidence that other papers relating to large tracts of land in the same locality were treated exactly as this was. This is exceedingly important evidence, and necessarily should go in.

There is no question about their having been offered. You will recollect that the plats were all bound together, and Mr. Davis has simply selected out one, and left the others. If one was offered, necessarily the others were. In fact, they were all offered and the attention of the jury was called to several of them.

So with the protocols. The attention of the jury was called to the fact that the signatures of persons appearing in these protocols were the same in many instances as the pro-
481 tocol upon which we depended for out title; that the sig-

pearances were the same, and that the custody of the surveyor general was the custody in which were found other instruments relating to the devolution of estates in probate matters.

We understand, of course, that it will be a matter of considerable expense to the plaintiffs to put these things in, but that consideration has never been allowed to stand in the way of a presentation of the full and exact bill of exceptions for the purpose of demonstration to the Court above of all the facts presented to the Court below. Mr. Davis has had time to have these inserted since May, when this bill of exceptions was presented to me, and when I formally made the same ob-

Swayne No. 3. 9|5|02.

jections that I do now, that these papers were not in the record, and has had since June the benefit of your ruling that though they were with the surveyor general, they must be inserted in the record by the plaintiff in error who was presenting the case to the Appellate Court.

Yours very truly,

(Signed) W. A. BLOUNT.

Enc.

L.

In United States Circuit Court, Northern District of Florida, at Pensacola.

FLORIDA MCGUIRE and MATILDA CARO
vs.
WM. FISHER, *et al.*

The defendants except to the bill of exceptions as presented to them September 4, 1902, for the following reasons:

Page 224. The whole of the plats, exceptions, etc., of Joseph Caro, is not in the record, but should be.

Page 239. Not only were the protocols relating to Joseph Marshall and Thomas Marshall offered, but eight or ten offered, which are not, but which should be, in the bill of exceptions.

(Signed) BLOUNT & BLOUNT,
Attorneys for Defendants.

482 Judge's Chambers, United States District Court, Northern District of Florida.

Charles Swayne,
Judge.

GUYENCOURT, DEL., 9 *Mo.* 12th, 1902.

W. A. Blount, Esq.,
Pensacola, Fla.

Dear Sir:

The record in the Fla. McGuire case came on 8th just as I was leaving for Asbury Park, also your letter. I returned record to Mr. Davis by next mail with instructions to insert the plats and protocols before using it. I trust he will be able to get it ready in time, for I believe it will save all parties much trouble if the Court of Appeals can pass on the matter now.

Very truly yours,

CHAS. SWAYNE.

[Indorsed:] No. 1202. Florida McGuire, *et al., vs.* Wm. A. Blount, *et al.* Affidavit of W. A. Blount on motion to strike bill of exceptions. U. S. Circuit Court of Appeals. Filed Jan. 2, 1902. Charles H. Lednum, Clerk.

483 Demurrer and answer to motion to strike.

United States Circuit of Appeals, Fifth Circuit. No. 1202. Florida Maguire, *et als., versus* Wm. A. Blount, *et als.* Filed Jany. 20, 1903.

United States Circuit Court of Appeals, filed January 23, 1903. CHARLES H. LEDNUM,
Clerk.

484 United States Circuit Court of Appeals, Fifth Circuit.

FLORIDA MAGUIRE, *et als.*,
versus
WM. A. BLOUNT, *et als.*
} No. 1202.

Demurrer and Answer.

Now come the plaintiffs in error, by their undersigned attorneys, and demur to the motion of defendants in error to strike bill of exceptions from the record, and for cause of demurrer, say:

1st. That said motion is illegal and unauthorized by the practice of this Court.

2nd. That the tarnscript of the record from the Circuit Court, duly certified by the Clerk, cannot be contradicted, varied or extended by affidavit, in this Court.

3rd. That exparte affidavits are not admissable to show falsity in the transcript.

4th. That the motion does not specify to which one of the twenty-five bills of exceptions taken by plaintiff it is directed.

5th. That the bill of exceptions, after having been signed by the presiding Judge of the lower Court, became a part of the record, and cannot be altered, changed or added to, by the said Judge, thereafter.

6th. That the certificate of the Clerk of the lower Court appended to the record is full and complete.

7th. That said motion does not state or indicate what documents have been omitted from the record, nor does it state what document or papers have been improperly included therein, or what material changes have been made in the bills of exceptions signed by the Judge of the lower Court and appearing in the record herein.

Wherefore, they pray that this demurrer be sustained and plaintiff's motion denied, with costs.

E. HOWARD McCALEB,
JAMES WILKINSON,
E. T. DAVIS,
Attorneys for Plaintiffs in Error.

485 And should said demurrer be overruled, and not otherwise, then for answer to said motion made by defendants in error, the plaintiffs in error say that the facts stated in said motion are erroneous and untrue, as will more fully appear by the affidavit of E. T. Davis, and the exhibits attached thereto, here referred to as part hereof.

That the omitted documents and papers referred to in said motion are not in the custody of the Clerk of the lower Court, were not marked "filed," and no certified copies thereof were left with the Clerk, as appears from his statement to be found on page 344 of the printed record of this cause.

Wherefore, they pray that plaintiffs' motion may be denied, with costs.

E. HOWARD McCALEB,
JAMES WILKINSON,
E. T. DAVIS,
Attorneys for Plaintiffs in Error.

[Indorsement:] No. 1202. U. S. Circuit Court of Appeals, Fifth Circuit. Florida Maguire, *et als., vs.* Wm. A. Blount,

et als. Demurrer and answer to motion to strike. E. Howard McCaleb, Jas. Wilkinson, E. T. Davis, Attorneys for Plaintiffs in Error. Filed Jany. 20, 1903.

CHARLES H. LEDNUM,
Clerk.

486 Motion to Dismiss Bill of Exceptions. Traverse of E. T. Davis.

United States Circuit Court of Appeals, Fifth Circuit. No. 1202. Florida McGuire and Matilda Caro, Plaintiffs in Error, *versus* W. A. Blount and Wm. Fisher, *et als.*, Defendants in Error. Filed Jany. 20, 1903.

United States Circuit Court of Appeals. Filed Jan. 23, 1903.

CHARLES H. LEDNUM,
Clerk.

488 United States Circuit Court of Appeals, Fifth Circuit.

FLORIDA MAGUIRE, *et als.*, Plaintiffs in Error,
versus
WM. A. BLOUNT, *et als.*, Defendants in Error. } No. 1202.

Error to the United States Circuit Court, Northern District of Florida.

E. T. DAVIS, being duly sworn, deposes and says:

That the allegation in the first paragraph of the motion to strike out exceptions of plaintiffs in error, made by W. A. Blount, Esq., attorney for defendants in error, viz: "That the bill of exceptions was placed by the Hon. Charles Swayne, Judge, in the hands of E. T. Davis, one of the attorneys for the complainants, with the instructions that it should not be effective as a bill of exceptions until certain points of difference, then pending between the counsel for the respective parties, as to what said bill should contain, should be determined by the said Judge," is erroneous and a misrepresentation of the facts—as will more fully appear by a copy of the letter received by affiant from the Hon. Charles Swayne, dated the 26th day of August, 1902, herewith filed as part hereof, marked Exhibit "A."

Affiant further says that, after receiving the bill of exceptions and the letter marked Exhibit "A," by mail from the Hon. Charles Swayne, Judge, he immediately filed the said bills of exceptions with the Clerk of the Circuit Court of the United States for the Northern District of Florida, proceeded to New Orleans, to get the application for a writ of error

bond, citations in error and assignments of error from E. Howard McCaleb, Esq., one of the attorneys for plaintiffs in error, who was charged with the preparation of them, and upon his return to Pensacola, Fla., received a letter from W. A. Blount, Esq., and another from the Hon. Charles Swayne, and that W. A. Blount rang affiant up over the telephone and stated that Judge Swayne had requested affiant to submit the bills of exceptions to him, W. A. Blount, Esq., and he asked affiant to bring the bills of exceptions to his office. There-
489 upon affiant, as a matter of courtesy, applied to the Clerk of the United States Circuit Court, obtained the bills of exceptions and took them to the office of W. A. Blount, Esq.

That affiant stated to W. A. Blount, Esq., that the bills of exceptions had been filed on the receipt of them from Judge Swayne, and that they could not be changed or altered after they had been settled, and signed by the Judge.

Affiant further says that W. A. Blount, Esq., took the bills of exceptions and again comparing them with his objections to the bills of exceptions, which were before the Hon. Charles Swayne, when he signed the same, and he, the said W. A. Blount, Esq., struck out the name of "Chardon" appearing in the bills, and inserted in lieu thereof the name "Jaudon" in the documents offered by the defendants in the proceedings and record in the suit of A. V. Caro *vs.* Jaudon and Nathaniel Thurston for wages, and on page eighty-four, following the name of R. L. Scarlett, he, the said W. A. Blount, Esq., added "Surveyor-General of the United States," and the work [word] "claimed" was inserted for the word "proved," in the testimony of A. C. Blount, and the words "that land" were stricken out, and the words "the land in controversy" were inserted, the same being in the testimony of Wm. Fisher—that all of said corrections and insertions in said bills of exceptions were made by the said W. A. Blount, Esq., and that affiant considered them immaterial, and made no objection thereto.

Affiant further says that the changes made in the words were done by the said W. A. Blount, Esq., and that he stated to W. A. Blount, Esq., at the time, that he had made up the bills of exceptions according to the stenographic notes, and that in the replication submitted by affiant to the objections urged by W. A. Blount, Esq., attorney for defendants in error —all of which Judge Charles Swayne had before him in answer to the said objections to the bills of exceptions, at the time he considered, settled and signed the same, and that affiant had left it entirely with the Judge to decide as he considered them immaterial.

Affiant further says that these were all the changes made in the record, and the statement that affiant yielded to all of the contentions of the defendants in error in striking out many parts of the alleged bills of exceptions and omitting many pages which had been inserted before the said Judge signed the same, is erroneous, not in accordance with the facts, and untrue.

Affiant further says that no changes were made in the record whatever, except those which have been mentioned above, and these were made by W. A. Blount, Esq., attorney for
490 defendants in error, at his instigation, request and solicitation, and without any suggestion whatever upon the part of affiant, except as above stated.

That he had left it entirely with the Judge when he signed the bills of exceptions, and affiant considered them immaterial.

Affiant further says that, after W. A. Blount, Esq., attorney for defendants in error, had compared the bills of exceptions with his objections, that he stated to affiant that Judge Charles Swayne had requested the bills of exceptions sent back to him, and affiant replied then and there that he would not do so, or consent to their being returned to the Judge as the bills and exhibits attached had been filed, were then part of the records of the Court, to which W. A. Blount, Esq., then and there replied: "Tell the Clerk that Judge Swayne has requested it sent back to him," which message affiant delivered when he returned the bills of exceptions to the Clerk in his office.

Affiant further says that he did not return the bills of exceptions to Judge Charles Swayne, then absent from the Circuit, but absolutely declined and refused so to do.

Affiant further says that, on the following day, W. A. Blount, Esq., attorney for defendants in error, served affiant with objections—two in number—to the bills of exceptions, the same being the same objections which had by him before been made, and which objections were submitted to and were before the Hon. Charles Swayne, Judge, with replication made by affiant to same, when he, the said Judge, signed the bills of exceptions the grounds of said objections and the reasons in said replication being fully set forth therein, a copy of said replication is hereto attached as part hereof, and marked Exhibit "B."

Affiant further says that, upon receipt of the objections of W. A. Blount, Esq., attorney for defendants in error, he ascertained that the Deputy Clerk had again returned the bills of exceptions to Hon. Charles Swayne.

Affiant further says that he suspected that these attempts were made by counsel for defendant in error to defeat the writ of error sued out by plaintiffs in error, and that plaintiffs

in error had only a few days in which to file their application for writ of error, and to obtain the necessary writ, citation and bond, and in order to meet defendants in error on every issue, prepared a replication to the objections of W. A. Blount, Esq., and forwarded the same to the Hon. Charles Swayne, Judge, a copy of which replication is hereto annexed as part hereof, marked Exhibit "C."

Affiant further says that he immediately proceeded to
491 Huntsville, Alabama, with his application for writ of error, the necessary writ, citations in error, bond, etc., and had the same approved and signed by the Hon. David Shelby, U. S. Circuit Judge for the Fifth Circuit, who was the only Judge within the Circuit at the time, and that he, affiant, returned to Pensacola, Fla., and had the same, after obtaining the signature of the Judge, properly filed in the U. S. Circuit Court.

Affiant further says that several days after the application for writ of error, order, writ, citation, bond, assignment of error, etc., had been filed, he received a letter from the Hon. Charles Swayne, to include in the bills of exceptions, the documents referred to in the objections of Messrs. Blount & Blount, attorneys for defendants in error.

Affiant further says that he, upon filing of the papers pertaining to the writ of error, insisted upon F. W. Marsh, Clerk of the Court, making out the transcript of the record, and he, the said Marsh, stated to affiant that he had directions from W. A. Blount, Esq., and also from Judge Swayne, not to make out said transcript, and thereupon affiant stated to said Marsh that unless he did so without delay, affiant would take the necessary steps to compel him so to do.

Affiant further says that, on the following day, he received a letter from W. A. Blount, Esq., a copy of which is hereto attached, and marked Exhibit "E."

Affiant further says that the direction to insert the plats and protocols referred to by Messrs. Blount & Blount, attorneys for defendants in error, in their objections, was made by the Hon. Charles Swayne, after the papers relative to the writ of error has been signed, approved and filed in this Court, as well as the threatening letter of W. A. Blount., Esq., to him, referred to.

Affiant further says that the bills of exceptions contained in the transcript of the record in this Court are the same bills of exceptions signed by the Hon. Charles Swayne, Judge of the lower Court, and that the statement that "since it was signed by him, it has been materially changed and altered by E. T. Davis, one of the attorneys for plaintiffs in error, by inserting therein certain material papers, is erroneous and untrue.

Affiant further says that it is not true that certain material papers have been omitted from the record, but under the most trying circumstances and attempts made to defeat affiant in making up and obtaining his bills of exceptions, he succeeded, after a long interval of five months, in finally making a complete record of the case, and that the transcript contains a true and perfect copy of the bills of exceptions, signed, sealed
492 and approved by the Hon. Charles Swayne, Judge of the Court below, and that the same have not been altered or changed in any way with the exception of the immaterial alterations made as above stated by W. A. Blount, Esq., in his office.

Affiant further says that the statement that the bills of exceptions were filed without the consent of Judge Swayne is erroneous and untrue.

Affiant further says that the statement the bills of exceptions were filed against the express command of said Charles Swayne, Judge, is likewise erroneous and untrue.

E. T. DAVIS.

Sworn to and subscribed before me, this 20th day of January, 1903, in the City of New Orleans, La.

[SEAL] ARTHUR B. LEOPOLD,
Not. Pub.

Supplement, Traversing the Affidavit of W. A. Blount.

STATE OF FLORIDA,
Escambia County.

Affiant further says that it is true that, during the month of April, 1902, that he did present to W. A. Blount a bill of exceptions, and that there were many documents offered in evidence, which the said bill did not contain, the reason why it did not contain a copy of said documents was because none of the documents offered in evidence by the defendants in error at the trial were filed in the Court or copies thereof filed or left as of record in said case, and that affiant was unable to obtain copies.

Affiant further says that, upon the objection of W. A. Blount to his bill of exceptions, he requested of W. A. Blount to furnish him with the documents, which had been offered by defendants in error, and the said W. A. Blount and Wm. Fisher did furnish to affiant certain documents, all of which affiant copied and included in his bill of exceptions, and upon the completion thereof, submitted the bill of exceptions to W. A. Blount.

Affiant furthers says that W. A. Blount kept the bill of exceptions about two weeks, and returned the same, with his objections thereto, which objections is marked Exhibit A in his affidavit.

Affiant further says that he made his replication to the objections and forwarded the same to the Hon. Charles Swayne, Judge, at Guyencourt, Del.

Affiant further says that, on or about the 16th day of
493 June, 1902, a hearing was had on said bill, before the Hon. Charles Swayne, Judge, at Pensacola.

Affiant further says that the documents, which were objected to, not being in the bill of exceptions at that time, is shown by the said Exhibit A attached to the affidavit of W. A. Blount in this motion, that none of the documents so named were filed in the Court or copies thereof filed or left as of record in the case.

Affiant further says that the Hon. Charles Swayne rendered his decision, requiring affiant to include in the bill of exceptions copies of all the documents introduced in evidence by the defendants in error.

Affiant further says that he did go to Tallahassee, Fla., and obtain copies of all documents, which had been introduced, though the same had not been filed, or copies thereof filed, or left as of record in the case, as the purported Spanish documents offered in evidence by the defendants had been immediately removed from the Court at Pensacola without copies being left or filed as of record in the Court, and return to Tallahasse, Fla.

Affiant further says that, at the time of the hearing aforesaid, that there were still other documents offered by the defendants in error, at the time of the trial of the case, in the hands of W. A. Blount and Wm. Fisher, and for that reason, a copy of those documents were not included in the bill of exceptions.

Affiant further says that, after obtaining copies of all documents, that were offered in evidence, and of which he had been able to obtain in order to make copies from, that affiant prepared his bill of exceptions and presented the same to W. A. Blount, and that W. A. Blount, after keeping the same for about two weeks, he returned the bill of exceptions with his objections designated as Exhibit B in his affidavit.

Affiant further says that he took the objections and the bill of exceptions and carefully went over the same, and corrected the same so far as right, but there were several documents referred to in these objections, which affiant had not been able

to get hold of, as the same was in the hands of the attorneys for the defendants in error.

Affiant further says that none of the documents named in these objections were filed in the Court, or copies thereof left or filed as of record in the case.

Affiant further says that, after preparing his bill of exceptions, he presented the same to W. A. Blount, and that after W. A. Blount had kept the bill of exceptions for about
494 two weeks, he returned the same with the objections, marked Exhibit C of his affidavit.

Affiant further says that affiant stated to W. A. Blount that the record in the suit of A. V. Caro *vs.* Samuel Jaudon and Thurston, and the deed from the Pensacola City Co. to Charles Ahrons, affiant has been unable to obtain copies of same, as their whereabouts were unknown to affiant, and upon the following day, they were furnished to affiant by William Fisher.

Affiant further says that, after making copies of the same, he included them in the bill of exceptions, and compared the objections of W. A. Blount with the bill of exceptions, and as affiant was informed that W. A. Blount was out of the city, he, affiant, made replication to each and every objection made by W. A. Blount, and forwarded by mailing in the post-office, at Pensacola, the bill of exceptions, the brief as taken by the stenographers setting out the testimony and designating the name of each and every document that was offered, also the objections of W. A. Blount, and a replication to each and every objection, directing the same to Hon. Charles Swayne, Judge, at Guyencourt, Del., a copy of said replication being hereto attached and marked Exhibit "B."

Affiant further says that, at the time of the making of the objections that there were no documents offered by the defendants in error on file or copies thereof filed or left as of record in the case. All other allegations are answered fully in the traverse of motion included herein.

E. T. DAVIS.

Sworn to and subscribed before me, this 17th day of January, 1903.

C. J. LEVEY,
Notary Public.

[SEAL OF NOTARY PUBLIC, STATE OF FLORIDA.]

Exhibit "A."

GUYENCOURT, DEL., 8 *Mo.* 26th, 1902.

E. T. Davis, Esq.,
Pensacola, Fla.

Dear Sir:

I send you by this mail bill of exceptions in F. McGuire case signed. I was not able to verify all the replications, especially to Mr. Blount's exceptions Nos. 5, 13, 14 and 15, but I send the bill signed, on account of your short time for writ of error, if I find in future that Mr. Blount is correct, in any of his objections, I shall so certify to the Court of Appeals.

Yours very truly,

(Signed) CHARLES SWAYNE.

495 *Exhibit "B."*

In United States Circuit Court for the Northern District of Florida, at Pensacola.

FLORIDA MCGUIRE and MATILDA CARO
vs.
WM. FISHER and W. A. BLOUNT, *et al.*

The plaintiffs' replication to the exceptions of defendants to the bill of exceptions:

1st. To first exception, will say that the word never has been inserted.

2nd. To second exception will say that the record referred to has been inserted in its proper place, coming from the hands of Mr. Wm. Fisher.

3rd. To third exception, will say that the bill of complaint has been inserted in its proper place.

4th. To the fourth exception will say that the document introduced never was a deed, but was an answer made by the Pensacola City Co., in which C. C. Younge, Sr., made affidavit that he was one of the directors of the Pensacola City Co. and was counsel for the company in that suit, which document is in its proper place in record of bill of exceptions.

5th. To the fifth exception will say: The document referred to is inserted in its proper place, having come from the possession of Mr. Wm. Fisher.

6th. To the sixth exception will say that the statement referred to has been inserted in the record in its proper place, as agreed upon by counsels.

7th. To the seventh exception will say that the bill and answer referred to is in their proper places, and the order appointing a receiver withdrawn, and placed in its proper place in the record, simply being a mistake in placing the documents as offered.

8th. To eighth exception will say that the date 1873 has been stricken, and the date 1783 inserted, simply being a clerical error.

9th. To the ninth exception will say that the proceedings of the land commissioners are in the record in its proper place.

10th. To tenth exception will say that the pages referred to has been withdrawn from between two parts of the proceedings by Maria Moreno to sell the property, simply being overlooked when placed in the record.

11th. To the eleventh exception will say that pages
496 120 and 121 being withdrawn from their position, the other pages follow in order, and the caption is stricken.

12th. To the twelfth exception will say that the translation of pages from 115 to 125 has been inserted in the record in its proper place, having been overlooked.

13th. To the thirteenth exception will say that the pages referred to and as they appear in the record is a true and correct copy of the document offered in evidence.

14th. To the fourteenth exception will say that the plats referred to in this exception, that all of the plats offered and read to the jury, is set out in the record in their proper place, and no other plats or explanations were offered, read, filed or left of record, in the case.

15th. To the fifteenth exception will say: The protocols relating to Thomas and Joseph Marshall, are contained in the record in its proper place, and that the eight or ten others referred to in this exception are not named or designated, nor were they offered in evidence, or read to the jury, or filed of record, or left as of record, in this case.

16th. To the sixteenth exception will say that the word "proved" appears in the brief of evidence, as written by the stenographer.

17th. To the seventeenth exception will say that the words "that land" appears in the brief of evidence as written by the stenographer.

JAMES WILKINSON,
SIMEON BELDON and
E. T. DAVIS,
Attys. for Plaintiffs.

Exhibit "C."

In United States Circuit Court, Northern District of Florida, at Pensacola.

FLORIDA MCGUIRE and MATILDA CARO
vs.
WM. FISHER, *et al.*

Plaintiffs' Replication to the Defendants' Exception to Plaintiffs' Bill of Exceptions.

First. To defendants' first exception answers as follows:

The exception does not designate, or name, any plats made by Joseph E. Caro, which are not set out in the bill of
497 exceptions, and that no other plats made by Joseph E. Caro were offered in evidence, read to the jury, named or designated, or filed, or copies thereof produced, offered, filed or left of record, in this case, except the plats which was shown to the witness, read to the jury, designated by date, and offered in evidence, and is fully set forth in the bill of exceptions in its proper place, and which is a plat of this particular property in controversy, and purports to have been made by Joseph E. Caro.

Second. To defendants' second exception, answers as follows:

The protocol of Thomas and Joseph Marshall is set out in the bill of exceptions in its proper place and designated by name, over which there is no contention. The eight or ten protocols referred to in the exception are not named or designated, nor were they produced at the trial of the case, or offered in evidence, or read to the jury, or filed, or copies thereof produced, offered in evidence, or read to the jury, or filed or left as of record in this case.

Plaintiffs, further answering, says: That the exceptions made by the defendants, and which are only two in number, were fully presented to the Court before the approval and signing and sealing of the bill of exceptions, by the Court, and that the bill of exceptions, as it now stands, contains a full and complete record of the case, verified by the brief of evidence made and prepared by the stenographer, and that the exceptions now taken, by the defendants, the questions therein have been fully presented to the Court, and passed upon, and the bill of exceptions approved, sealed, signed and filed, and the defendants have a complete remedy by writ of certiorari.

JAMES WILKINSON,
SIMEON BELDON and
E. T. DAVIS,
Attys. for Plaintiffs.

Exhibit "E."

"Copy." Sept. 26th, 1902.

FLORIDA MCGUIRE,
vs.
WM. FISHER, *et al.*

Mr. E. T. Davis,
City.

Dear Sir:

Mr. F. W. Marsh, Clerk, informs me that you insist upon his making up and delivering to you the transcript of
498 the record in this case, including a bill of exceptions which does not contain the papers which the Court directed you to insert before using it. You will recollect that the bill, as it now stands, is not the bill as signed Judge Swayne, and therefore, even though you could technically rely upon the bill of exceptions signed by him, you cannot do so, as it now stands. I have telegraphed the Judge of your insistence, and beg to inform you that if you persist in your demands upon the Clerk, that I will immediately upon the return of the Judge, take proceedings to have you disbarred from practice in this Court. There can be no other result of your attempt to use a paper which you know does not represent the final certificate of the Judge.

Yours very truly,

(Signed) W. A. BLOUNT.

[Indorsement:] No. 1202. In U. S. Circuit Court of Appeals, at New Orleans, La. Florida McGuire and Matilda Caro, Plaintiffs in Error, *vs.* W. A. Blount and Wm. Fisher, *et als.*, Defendants in Error. Motion to dismiss bill of exceptions. Traverse of E. T. Davis. Filed Jany. 20, 1903.

CHARLES H. LEDNUM, *Clerk.*

499 FLORIDA MCGUIRE, *et al.*,
vs.
WILLIAM A. BLOUNT, *et al.*
} No. 1202.

January 27, 1903.

On this day this cause was regularly called, and after argument by E. Howard McCaleb, Esq., and E. T. Davis, Esq., for plaintiffs in error, and W. A. Blount, Esq., for defendants in error, was submitted to the Court upon record and briefs.

FLORIDA MCGUIRE, *et al.*,
vs.
WILLIAM A. BLOUNT, *et al.* } No. 1202.

This cause came on to be heard on the transcript of the record from the Circuit Ciurt of the United States for the Northern District of Florida, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said Circuit Court in this cause be, and the same is hereby, affirmed.

It is further ordered and adjudged that the plaintiffs in error, Florida McGuire and Matilda Caro, and the sureties on the writ of error bond herein, Geo. W. Pryor, Sr., and Ludwig Carlson, be condemned to pay the costs of this cause in this Court, for which execution may be issued out of said Circuit Court.

March 24th, 1903.

500 U. S. Circuit Court of Appeals, Fifth Circuit.

FLORIDA MCGUIRE, *et al.*, Plaintiffs in Error,
vs.
WILLIAM A. BLOUNT, *et al.*, Defendants in Error. } No. 1202.

Error to U. S. Circuit Court, Northern District of Florida.

To the Hon. U. S. Circuit Court of Appeals for the Fifth Circuit:

The petition of Widow Florida McGuire and Miss Matilda Caro, plaintiffs in error herein, respectfully shows:

That they desire a rehearing from the judgment rendered in this cause on the .... day of ....., by this Honorable Court for the reasons that the Court erred in refusing to sustain the various bills of exception and specifications of error as set forth in the record and plaintiffs' briefs filed herein, pages 4 to 26, inclusive; made part of this exception for further reference. That the Court especially erred in confirming the ruling of the lower Court admitting the documents referred to in said bills of exception in evidence over the objections of plaintiffs. That said documents were not properly authenticated by any official seal or official certificates and were suspicious in appearance. That said Court did not specifically pass upon the various exceptions and bills of exception as contained in the record, and that the Court erred in refusing to sustain aforesaid bills of exception set forth specifically in plaintiffs' assignment of errors contained on pages 4 to 13 of appellants' original brief, annexed to and made a part

of this petition, for a rehearing for further reference, and as if set out in extenso herein.

Wherefore petitioners pray that a rehearing be granted to them in this cause, and for all general and equitable relief, and your petitioners will further pray.

E. T. DAVIS,
SIMEON BELDEN,
JAMES WILKINSON, *Attys.*

Petition for rehearing filed April 9, 1903.

501 FLORIDA MCGUIRE, *et al.*, *vs.* WILLIAM A. BLOUNT, *et al.* } No. 1202

April 10, 1903.

Ordered that the petition for rehearing filed in this cause be, and it is hereby, denied.

United States Circuit of Appeals, Fifth Circuit. November Term, 1902.

FLORIDA MCGUIRE, *et al.*, Plaintiffs in Error, *vs.* WILLIAM A. BLOUNT, *et al.*, Defendants in Error. } No. 1202.

Error to the United States Circuit Court, Northern District of Florida.

Before PARDEE, MCCORMICK and SHELBY, Circuit Judges.

By the Court:

On the trial of this case, the trial Judge directed a verdict for the defendants, and the correctness of that direction turns upon the admissibility and effect, in evidence of the purported will of Gabriel Rivas, ancestor of the plaintiffs below, plaintiffs in error here, and a certain protocol and documents showing judicial proceedings before the Spanish Governor of West Florida, and other Spanish officials in West Florida from 1807 to 1821, all in the settlement of the estate of the said Gabriel Rivas, and showing the judicial sale of the land in controversy.

Upon consideration, and in the light of the very able arguments and briefs submitted, we are of opinion that the said will, protocol and documents were properly admitted in evidence, and that their effect, sustained as they were by proof of corroborating facts and circumstances, is to show that the plaintiffs below, plaintiffs in error here, as the heirs and de-

scendants of Gabriel Rivas, has no right to recover the lands in controversy.

The direction to the jury to find for the defendants was correct and the judgment of the Circuit Court is affirmed.

Filed March 24th, 1903.

502 United States Circuit Court of Appeals for the Fifth Circuit.

I, Charles H. Lednum, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the foregoing 502 pages, numbered from A to 501 inclusive, contain a true copy of the proceedings, including opinion of the Court, except that the original maps filed with the record are not copied therein, but are held in my custody subject to the order of the Court, in the case of Florida McGuire, *et al.*, *versus* William A. Blount, *et al.*, No. 1202, as the same remains upon the files and records of said United States Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals, at the City of New Orleans, Louisiana, this 7th day of Dec., A. D. 1903.

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

503 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the fifth circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which Mrs. Florida McGuire, born Lavalette, widow of —— McGuire, and Matilda Caro, are plaintiffs in error, and William Fisher, Mrs. William Fisher, Thomas C. Watson, John Williams, William A. Blount, James W. Bullard, and Mrs. Young, widow and executrix or administratrix of the estate of C. C. Young, are defendants in error, which suit was removed into the said circuit court of appeals by virtue of a writ of error to the circuit court of the United States for the northern district of Florida, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals
504 and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said

cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 17th day of November, in the year of our Lord one thousand nine hundred and three.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

505 [Endorsed:] No. 1202. File No. 19,100. Supreme Court of the United States. No. 449, October term, 1903. Florida McGuire *et al.*, *vs.* William A. Blount *et al.* Writ of certiorari. U. S. circuit court of appeals. Filed Nov. 27, 1903. Charles H. Lednum, clerk.

UNITED STATES OF AMERICA, }
Fifth Judicial Circuit. }

In obedience to the command of the within writ, and by direction of the judges of the United States circuit court of appeals for the fifth circuit, I, Charles H. Lednum, clerk of said court, as a return to, and in compliance with, said writ, do herewith transmit to the honorable, the Supreme Court of the United States, a true, full and perfect transcript of the record and all proceedings had in said court in the cause wherein Florida McGuire, *et al.*, were plaintiffs in error, and William A. Blount, *et al.*, were defendants in error, as fully and completely as the same now remains of record in my office, except the original maps filed with the record are not copied therein, but are held in my custody subject to the order of the court.

Given under my hand and the seal of said United States circuit court of appeals for the fifth circuit at the city of New Orleans, Louisiana, this 7th day of December, A. D. 1903.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

[Endorsed:] File No. 19,100. Supreme Court U. S. October term, 1904. Term No. 134. Florida McGuire *et al.*, petitioners, *vs.* Wm. A. Blount *et al.* Writ of certiorari and return. Filed Dec. 10", 1903.

FILE COPY.

Office Supreme Court U. S.
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OCT 28 1903
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1903.

FLORIDA McGUIRE AND MATILDA CARO,
Petitioners,
v.
WILLIAM A. BLOUNT, WILLIAM FISHER, PENSACOLA CITY CO. *et al.*

No. 449

PETITION.

For Writ of Certiorari, requiring the Circuit Court of Appeals for the Fifth Circuit to Certify to the Supreme Court for its Review and Determination the Cause of Florida McGuire and Matilda Caro *v.* William A. Blount, William Fisher, Mrs. William Fisher, Pensacola City Company, Thomas C. Watson, John Williams, John W. Bullard, Mrs. Younge, widow and executrix or administratrix of the estate of C. C. Younge, deceased.

H. A. HERBERT,
BENJAMIN MICOU,
E. T. DAVIS,
SIMEON S. BELDEN,
Counsel for Petitioners.

March 25, 1903, and a decree entered in accordance with said opinion, affirming the judgment of the United States Circuit Court for the Northern District of Florida. A certified copy of the record of said cause, which is numbered 1202, in said Circuit Court of Appeals, accompanies this petition.

II.

That the decree of the Circuit Court of Appeals confirming said United States Circuit Court for the Northern District of Florida, was as follows:

"On the trial of this case, the trial judge directed a verdict for the defendants, and the correctness of that direction turns upon the admissibility, and effect, in evidence of the purported will of Gabriel de Rivas, ancestor of the plaintiffs below, plaintiffs in error here, and a certain protocol and documents showing judicial proceedings before the Spanish governor of West Florida and other Spanish officials in West Florida from 1807 to 1821, all in the settlement of the estate of the said Gabriel de Rivas, and showing the judicial sale of the land in controversy.

"Upon consideration, and in the light of the very able arguments and briefs submitted, we are of opinion that the said will, protocol and documents were properly admitted in evidence, and that their effect, sustained as they were by proof of corroborating facts and circumstances, is to show that the plaintiffs below, plaintiffs in error here, as the heirs and descendants of Gabriel de Rivas, have no right to recover the lands in controversy.

"The direction to the jury to find for the defendants was correct, and the judgment of the Circuit Court is (p. 501, Rec.) Affirmed."

III.

Your petitioners represent that Gabriel de Rivas, their ancestor, died seized and possessed of 300 arpens of land, said land and profits being now valued and worth $150,000 or more (p. 7, Rec.), and fully described (pp. 30, 31, Rec.), granted from the Spanish Government to Gabriel

de Rivas, in the Spanish language (pp. 27, 28, 29, Rec.), and translated (pp. 30, 31, 32, Rec.); and that this grant was admitted by the defendants in the U. S. Circuit Court for the Northern District of Florida as the origin of title to this property. That your petitioners proved heirship from Gabriel de Rivas (p. 33, Rec.). That this heirship is undisputed, and there is no contention over the grant, or that your petitioners are the legitimate and legal heirs of Gabriel de Rivas.

IV.

That Gabriel de Rivas died in possession of the property in dispute, and the said property was transmitted by operation of law to his heirs and wife. That the heirs of Gabriel de Rivas were in possession, through their mother. That there was no change of that possession, but that it continued through Paula de Rivas, the wife of Joseph E. Caro, and daughter of Gabriel de Rivas (pp. 33, 34, Rec.). That Joseph E. Caro, who was Custodian of the Archives, died in 1860, and that his son, A.V. Caro (witness in the Record, p. 33), shortly after the death of his father in 1860 removed to and resided upon the land in question and took possession thereof, in his own behalf and as agent for the other heirs. That he has resided on the land ever since that time, resides there now, and is still agent for the other heirs (pp. 33, 34, 68, 69, 70, 71 and 72, Rec.).

V.

That in, to wit, 1879, the Pensacola City Company, incorporated under the laws of Florida, instituted injunction proceedings in the Circuit Court of Escambia County, Florida, to enjoin the Rivas heirs from collecting the rents, issues and profits from their (the Rivas heirs') tenants, upon the tract of land in question. That by the decree rendered in this suit A. V. Caro, as one of the heirs of Rivas and agent for the other heirs,

was enjoined from collecting the revenues of rent from his tenants upon the tract of land in dispute, and said tenants were ordered to attorn to Judge A. E. Maxwell for rents; but that the said A. V. Caro, as heir and agent for the other heirs, and also the tenants, were none of them dispossessed, but still continued to reside upon the land and occupy the houses (pp. 38, 57, Rec.).

That the judge of the Circuit Court of Escambia County, Florida, who presided in the trial of the suit and rendered the decree therein, was A. E. Maxwell. That the said A. E. Maxwell was at the time president of the Pensacola City Company, a party complainant to the injunction suit, and was also a brother-in-law of W. H. Davidson (pp. 57, 58, Rec.) and a brother-in-law of W. E. Anderson (p. 307, Rec.), both parties complainant to the suit.

VI.

That in, to-wit, 1887, the Pensacola City Company instituted another suit against the Rivas heirs and their tenants, and lessees and grantees, in the Circuit Court of Escambia County, Florida, resulting in the appointment of one William Fisher receiver and a decree June 17, 1889, for the payment of rental to the said receiver (p. 93, Rec.). That one of the plaintiffs in this suit, at whose instance William Fisher was appointed receiver, and the tenants on the land ordered and directed to pay rent to him, was C. C. Younge. That the said C. C. Younge, besides being a complainant, was the attorney for complainants in this suit; that at the time one James F. McLellan, a brother-in-law of the before-mentioned C. C. Younge, was the judge of the Circuit Court of Escambia County, Florida, and it was before him that the suit was brought and the proceedings had, and it was he who decided the suit and appointed the said William Fisher as receiver and made the decree above mentioned (p. 73, Rec.).

VII.

Petitioners allege that the decree rendered in the beforementioned suit, by Judge A. E. Maxwell, was a fraud, and therefore null and void, its purpose being to obtain for the benefit of The Pensacola City Company the rents, issues and profits arising out of this land, the presiding judge being at the time interested in the company and the president of the same, and also being related to complainants in the suit, viz: W. H. Davidson and W. E. Anderson. They also allege that the decree rendered by Judge James F. McLellan was a fraud and likewise null and void, said decree being intended to put the Rivas heirs out of possession of the land and to invest William Fisher, agent for C. C. Younge, with control over the rents, issues and profits arising from the land; the said C. C. Younge being one of the complainants in, and attorney in, said suit, and the brother-in-law of the judge rendering the decree.

VIII.

Petitioners allege that the following is, and was at the time of the proceedings had before Judges Maxwell and McLellan and the decrees rendered in said proceedings, the statute law of the State of Florida:

"No judge of any court shall sit or preside in any cause to which he is a party, or in which he is interested, or in which he would be excluded from being a juror by reason of interest, consanguinity or affinity to either of the parties, nor shall he entertain any motion in the cause other than to have the same tried by a qualified tribunal."

Art. I, Sec. 967, R. S. of Florida, p. 354, 1892.

"Any and all judgments, decrees and orders except an order for the trial of the cause as hereinbefore provided, made by a judge so disqualified, shall be of no force and validity, and shall be null and void."

Art. I, Sec. 970, R. S. of Florida, p. 354, 1892.

And that the following was the law of Florida relative to the qualification of jurors:

"2. For Cause. The court shall, on motion of each party in any suit, examine on oath any person who is called as a juror therein to know whether he is related to either party, or has any interest in the cause, or has expressed or formed any opinion, or is sensible of any bias or prejudice therein; and the party objecting to the juror may introduce any other competent evidence in support of the objection; and if it shall appear to the court that the juror does not stand indifferent to the cause, or is otherwise incompetent, another shall be called and placed in his stead for the trial of that cause."

Sec. 1086, Code of Florida, 1892.

That under the above statutes the before-mentioned decrees of Judges Maxwell and McLellan were both null and void and of no force and effect whatsoever, because they were sitting and presiding in causes in which they would have been excluded from being jurors, by relationship to parties to the suit; and further, as to the decree rendered by Judge Maxwell, because he was sitting and presiding in a cause in which he would also have been excluded from being a juror by reason of interest (being president of a complainant company).

Petitioners allege that previous to the appointment of William Fisher as receiver, under the null and void decree, in to wit, 1889, of James F. McLellan, Judge of the Circuit Court of Escambia County, Florida, that William A. Blount, William Fisher, and The Pensacola City Company, *et al.*, defendants in error in the court below, never any of them at any time from the time of the grant to Gabriel de Rivas in 1806, up to 1889, had possession of the lands in question, and never exercised ownership over the property in question; and petitioners further allege that the above-mentioned null and void

decree of the Circuit Court of Escambia County, in 1889, did not vest in the defendants in error in the court below any legal title whatsoever, but that the status of said defendants in error since that decree in so far as any possession thereby acquired goes has been merely that of trespassers without title.

IX.

That this court in the case of *Christy* v. *Scott*, 14 How. 292, has held—

"that a mere intruder can not enter upon a person actually seized, and eject him, and then question his title, or set up an outstanding title in another. The maxim that the plaintiff must recover on the strength of his own title and not on the weakness of the defendant is applicable to all actions for the recovery of property. But if the plaintiff had actual prior possession of the land, this is strong enough to enable him to recover it from a mere trespasser, who entered without any title."

That the defendants in error have no title in themselves from Gabriel de Rivas, the grant to whom from Spain they recognize and which it is undisputed was the common origin of title to this property; but to defeat petitioner's title defendants in error rely upon an outstanding title in parties it is claimed this property passed to, alleging said outstanding title as commencing with a sale of the property in 1817 to settle the estate of Gabriel de Rivas and terminating with The Pensacola City Co. in 1870, a corporation under the laws of the State of Florida. And said defendants in error do not rely upon or undertake to show by any evidence a title from The Pensacola City Co., or from Gregario Caro, the person to whom it is alleged the interest of the Gabriel de Rivas heirs first passed under a sale had in the settlement of his estate in 1817; but that the following defendants in error below, and respondents here, rely upon title to themselves as follows:

That respondent William A. Blount traces title from Thomas C. Watson, March 2, 1899 (p. 343, Rec.); from C. C. Younge heirs, 21st October, 1890 (p. 345, Rec.); from Peter Knowles, 31st March, 1899 (p. 347, Rec.); from Edward W. Perry, 24th May, 1892 (p. 348, Rec.); Peter Knowles, 30th July, 1890 (p. 349, Rec.); A. A. Fisher, master, on decree against one Tate, F. G. Wrenshaw, A. E. McDavid and Fred Baher, November 2, 1896 (p. 350, Rec.).

That respondent William Fisher traces title from Peter Knowles, March 27, 1897 (p. 352, Rec.); from W. H. Knowles, 21st June, 1900 (p. 353, Rec.); from E. C. Benedict, 12th June, 1897 (p. 354, Rec.); Peter Knowles 18th May, 1897 (p. 356, Rec.); S. Tate and wife, 3d January, 1898 (p. 357, Rec.); C. R. Simmons, 11th January, 1900 (p. 359, Rec.); Peter Knowles, 21st May, 1897 (p. 360, Rec.); P. K. Young and wife, 26th July, 1888 (p. 362, Rec.); W. A. Blount, 12th July, 1900 (p. 364, Rec.); F. A. Booth, 23d December, 1890 (p. 365, Rec.); Chas. J. McLellan, 27th August, 1891 (p. 367, Rec.); T. Tate, 15th June, 1897 (p. 368, Rec.); John W. Frater to Wm. Fisher, 7th July, 1897 (p. 369, Rec.).

That respondent Thos. C. Watson traces title from Peter Knowles, 16th August, 1886 (p. 340, Rec.).

That as to the respondent, Mrs. C. C. Younge, widow and executrix or administratrix of C. C. Younge, that the said C. C. Younge traces title from Walter Tate, under date of August 16, 1894 (p. 342, Rec.).

That the following defendants in error below, and respondents here, viz: Mrs. Wm. Fisher, John Williams, and John W. Bullard, offer no evidence of title in themselves from any one. That none of the defendants in error below, and respondents here, offer any evidence of ever having had possession.

That the documents offered in evidence from p. 111 to

p. 368, Rec., purport to show only an imperfect chain of title from Gregario Caro, a purchaser of the interests of the heirs of Gabriel de Rivas, to the Pensacola City Company; and petitioners allege that there is no evidence that any of the grantors above enumerated of the respondents here acquired title from or through the Pensacola City Company. That it is attempted to show that one of the respondents, William Fisher, derived title to certain lots from John W. Frater, and that Frater derived title from A. V. Caro, one of the Rivas heirs; but it is not attempted to show that Frater derived title from Gregario Caro, to whom respondents rely on title to the property having passed away from the Rivas heirs in 1817.

The Pensacola City Co. was one of the parties defendant below in the Circuit Court of the United States for the Northern District of Florida (p. 1, Rec.), but as to said defendant return was made "not found" (p. 5, Rec.).

X.

That at the March term of the United States Circuit Court for the Northern District of Florida, 1902, suit in ejectment of *Florida McGuire and Matilda Caro* v. *William A. Blount et al.*, came on to be tried, and that before the trial your petitioners here, and plaintiffs there, Florida McGuire and Matilda Caro, presented their petition to the Honorable Charles Swayne, judge of the Circuit Court for the Northern District of Florida (pp. 24, 25, Rec.), asking that the said judge recuse himself because of the interest of his wife in the property, the subject of litigation, said petition stating:

"That your petitioners desire to take testimony of witnesses in order that any ruling of the court, either for or against this formal application, shall be made of record in this case."

The judge of the said court permitted the petition to be filed March 17, 1902, and then passed instanter upon the same, without first allowing the request of petitioners to take the testimony of witnesses, thereby preventing any fuller record of a ruling upon the merits of the petition. He passed on the petition in the following language:

"As to one or two statements in this petition the court will say: that Mrs. Lydia C. Swayne did not buy the property in question from Charles H. Edgar, but that the statement made by the court on the 12th day of November, 1901, was the statement that has always been made about it, that the purchase was negotiated for, a quit-claim deed was sent and returned. The statement that it does not appear that Mrs. Lydia C. Swayne ever consented to the return of the said deed was not correct. The court stated that the deed was returned, and of course it was so understood; could be understood; was understood, and if not, is understood now that the deed was sent back by her advice, consent and request; therefore, the court thinks that she has not any interest in the property in any way whatever, even if the counsel is right as to the rights of Edgar, in case he should have tendered a warranty deed, which I doubt. The time that has passed since that time has precluded him from doing so, or of taking any action, in my judgment, therefore, however, the court is compelled to over-rule this motion for the reasons stated." (p. 25, Rec.)

The judge of the court did some two days afterwards, viz: March 19, 1902, place on file in support of his denial of said petition an *ex parte* affidavit, dated March 18, 1902, not made in open court, or with opportunity to counsel for plaintiffs to examine the deponent (see p. 26, Rec.).

XI.

That after the denial of the said petition the cause came on to be heard, and at the trial your petitioners

offered the grant of Gabriel de Rivas to the 300 arpens of land, testimony of heirship and possession of the property up to the year 1889, when the Circuit Court for Escambia County, Florida, ordered and directed the payment of rents to Wm. Fisher, who had been appointed by said court receiver of the Pensacola City Company. And further offered evidence of possession by A. V. Caro for himself and as agent for the other heirs up to the present time, and that the proceedings had in the Circuit Court of Escambia County, Florida, before Judges A. E. Maxwell and James F. McLellan, and heretofore referred to, were shown. That the court then permitted the introduction, by the defendants, respondents here, of evidence against objections from plaintiffs, petitioners here, as follows:

XII.

Record in the case of A. V. Caro *v.* Samuel S. Joudon and Nathaniel Thurston, Trustees of the Pensacola City Co., in the Circuit Court of Escambia County, Florida, First Judicial Circuit (pp. 40–57, Rec.), which record petitioners allege was of a suit brought in 1869, an action for debt for watching, taking care of and tending to landed interests in the City of Pensacola, and preserving and taking care of a box containing valuable papers; all from 1862 to 1865. And that none of the pleading and evidence set forth in this record make any reference whatsoever to the property now in question. Furthermore, it was not a suit against any respondent here, or against or any grantor through whom any respondent here claims.

XIII.

The court further admitted the introduction by defendants, against objection of plaintiffs, a document stated by

counsel to be an abstract of claims, which purported to be in the handwriting of Joseph E. Caro, father of the witness A. V. Caro (p. 45, Rec.; Exhibit 3, pp. 56, 57, Rec.).

This document recites a grant to Gabriel de Rivas in 1806 of the property in question, a sale of the same at public auction to settle the estate of Gabriel de Rivas, October 20, 1817, to Gregario Caro; a sale by Gregario Caro to James Fitzsimmons *et. al.*, October 12, 1817; a sale of the property by James Fitzsimmons to Cirelo de Morant, as attorney in fact of John Chabeaux, of an undivided one-third part of the land above mentioned, the 22d of November, 1819.

Then it recites conveyances not of this property at all. Then that Joseph E. Caro set his hand and affixed his seal of office, December 23, 1835, and is signed Joseph E. Caro, Keeper of Public Archives, West Florida. There is nothing on the paper showing that the seal affixed was the seal of office, other than the recital above quoted. It is not shown to be the original or a copy. The court stated (p. 55, Rec.) that it considered the paper admissible to contradict statements of the witness that his father, Jos. E. Caro, had claimed this property for his mother. The document is not identified as being in the handwriting of Jos. E. Caro, further than an admission by the witness for plaintiffs, A. V. Caro, that "it looked like it, with the exception of the spelling" (p. 54, Rec.). There is no evidence offered of the signature of Jos. E. Caro. It is nowhere stated from what custody the document came. There is no file mark, or other writing on the document indicating it had ever been the official record of any transaction, or that it was ever a pubic document, recorded in any public office. It was produced from private hands.

XIV

The court permitted the offer by defendants of a number of papers consecutively, at one and the same time, subject to the right of inspection of all of said papers by the plaintiff, and the right to object when counsel had concluded their offer (p. 111, Rec.), and overruled the objections afterwards made specifically to these documents and admitted the same into evidence. Part of these papers (pp. 111–222, Rec.) consist of what purports to be the will of Gabriel de Rivas, and documents bearing upon the settlement of his estate. The writings are on sheets of paper fastened together by a tape cord, but not in a way to indicate that they ever composed any record, official or otherwise (which without this explanation would not appear from the printed record).

These papers do not recite or set forth a deed of sale to the property, or the judicial proceedings by any tribunal under the law of Spain in force in the West Province of Florida at that time, competent to effect a sale of the property. The papers relied upon to prove a sale only refer incidentally and collaterally to a sale having taken place. The references to a sale of what is assumed to have been this property are found in alleged petitions to and orders by the Governor of the West Province of Florida, an official not having jurisdiction, under the laws of Spain then in force in Florida, to probate a will or administer the estate of a decedent. These papers, therefore, it is alleged, if taken separately or connectedly, and if genuine and their authenticity was unquestioned, would not be legal evidence that a sale of the property was ever lawfully effected. But defendants below offered no evidence of where these papers came from, or of their age, and there is evidence offered by plaintiffs below that they were not known of until after 1872 (p. 79, Rec.); and that there was every opportunity for them to have found

their way among the Spanish Archives only at about the time they were first heard of (p. 304, 347, Rec.).

That as to all these papers from p. 111 to p. 222, Rec., no evidence is offered to show that they were ancient documents; that they had been constantly kept in the public archives; that they were authentic, or that they were genuine; that none of them are under any official seal; none of them bare any mark or writing whatsoever to indicate that they were ever part of any public record, or when, where, or how they ever found their way into the Spanish Archives; and where purporting to be copies no evidence is offered to prove that they are true copies; and that there are many conflicts and inconsistencies appearing upon their face that stamp them with the gravest suspicion and indicate that they are incredible and spurious.

That besides what has been cited as applicable to all of these papers, the following is applicable to certain of them:

The purported will of Gabriel de Rivas is not signed by him, does not have his name signed to it by any one; is not executed before an escribano, and is not valid on its face. For the Spanish of this document, see pp. 111–113, Rec.

The purported probate of the will, in Spanish, Exhibit 8, pp. 114–121, Rec., and the purported proceedings of Maria Moreno (in Spanish) to sell a house, Exhibit 11, pp. 131–138 (which house is not on the property in dispute), neither of them purports to be anything more than a true and correct tracing of a certain quaderno known as a protocol, in the archives of this (the Surveyor-General's) office. Certificates to the above effect (pp. 121 and 138, Rec.) are given by R. L. Scarlet, U. S. Surveyor-General, District of Florida, under his hand and private seal, August 26, 1901.

The purported translation of the petition of Eugenio Antonio Sierra, representing himself as testamentary executor of Gabriel de Rivas, deceased, in the year 1817, to sell the particular piece of property in question, and certain purported proceedings under said petition (all Exhibit 12, pp. 147–155, Rec.) merely purport to be a true and correct translation from the Spanish into English of the original manuscript proceedings now in the Spanish Archives of West Florida—

"In the matter of a sale of land of the estate of Gabriel de Rivas, deceased, duly certified by me as Keeper of the Spanish Archives of West Florida, under date of July 29, 1874, on file in case of *Pensacola City Company* v. *A. V. Caro*, in the Circuit Court of Escambia County, Florida."

The above certificate was given by F. E. de la Rua, clerk of the Circuit Court of Escambia County, Florida, May 1, 1884 (pp. 154, 155, Rec.); and from p. 154 of the Record it will be seen that the certificate above referred to as having been given by him as Keeper of the Spanish Archives of West Florida, July 29, 1874, is given under his hand and private seal. The name of Maria Moreno does not appear in that translation, nor does it appear that she authorized, assented to, or took any part whatever in the proceedings. The original of neither this document in Spanish nor of the two other documents, Exhibits 8 and 11, above referred to and merely purporting to be tracings of quadernos, known as protocols, are introduced or their non-production accounted for. Exhibits 8 and 11 are alleged to have been copies, and it is not attempted to account for the whereabouts of the originals or the failure to produce the same, nor to prove that they are true copies.

That the purported proceedings, in Spanish, by Maria Moreno, to sell the particular piece of property in ques-

tion (Exhibit 13, pp. 155–187, Rec.) is not certified to by any one as being either an original or a copy, and there is nothing to indicate that it has ever been in public custody, either as a private or a public record.

That as to the translation into English of the foregoing papers, viz:

1. The purported will of Gabriel de Rivas (Exhibit 9, pp. 122, 123, Rec.).

2. The purported probate of the will (Exhibit 10, pp. 124–131, Rec.).

3. The purported proceedings to sell a house and lot, by Maria Moreno (Exhibit 11, pp. 138–146, Rec.).

4. The purported translation of the proceedings by Maria Moreno, to sell this particular piece of property in question (Exhibit 14, pp. 187–222, Rec.). There is nothing upon nor accompanying any of these papers showing when, where, or by whom they were translated, nor is there any evidence offered of the correctness of the translations.

These papers (pp. 111–222, Rec.) are all the testimony bearing upon a sale of the property in question to Gregario Caro, save the purported abstract by Joseph E. Caro, already referred to.

XV

That as to the papers found in the Record offered in bulk, from Exhibit 15, p. 223, to the end of Exhibit 20, p. 234, the first, Exhibit 15, purports to be a translation from p. 425 of book A, of the proceedings of the Commissioners of Land Claims in the West District of Florida, and as will be seen (p. 226, Rec.) is certified to April 25, 1879, by F. E. de la Rua as Keeper of the Archives of West Florida, and translator, under his hand and private seal, as

"a true copy of a translation heretofore made by me."

The former translation of which this purports to be a copy is not offered in evidence. The original document in Spanish, from which the former translation was made, is not offered in evidence, its absence is nowhere accounted for, and there is nothing to show that the former translation, of which the paper here offered is only a copy, or the original in Spanish that was translated, was ever a public document, nor is there anything to show that the copy of the copy, the only thing offered in evidence, was ever a public document in any public archive; and there is no evidence offered to show it to be a true copy.

The purported proceedings before the Commissioners for the Settlement of Land Claims in West Florida, Exhibit 16, Book A, pp. 332, 333, see pp. 226–229 of this Record, most of which Exhibit is in Spanish, is not shown to be an original document, is not certified to by any official, is not given under any seal or register, and has nothing connected with it to show it is a true copy of Book A, pp. 332, 333.

Exhibit 17, purporting to be from pp. 332 and 333, Book A, Proceedings of Board of Commissioners, pp. 229–231, Rec., and Exhibit 18, p. 231, Rec., purporting to be a certificate from Joseph E. Caro, Keeper of Public Archives, West Florida, December 23, 1835, of the description of the courses and distances contained in Plat A, both being in English, are neither of them public documents, nor certified to as true and correct copies of public documents. Neither are under seal. Exhibits 16 and 17 both purport to come from pp. 332, 333, Book A, yet they are different documents and too long both to be found between those pages.

These purported proceedings before Commissioners for the Settlement of Land Claims in the West District of Florida, Exhibits 15–18 inclusive, recite the presentation of the claim of John Chabeaux to 300 arpens of land;

and defendants follow their production by offering Exhibit 19, p. 232, Rec., purporting to be p. 103, No. 46 of American Papers of State, and which is as follows:

"No. 4. By whom claimed: John Chabeaux. Original grantee, Gabriel de Rivas. Nature of Claim: Grant. Date of Cl.: November, 1806. Number of arpens, 300. Where situated: Bayou Texar. By whom issued, Intendent Mereles. When surveyed: 2d October, 1806. By whom surveyed: Vincenti P. Pintado, from 1806–1810."

Respondents then offer in evidence as Exhibit 20, pp. 232–234, an act of Congress entitled—

"An Act to confirm the reports of the Commissioners for ascertaining claims and titles to lands in West Florida, and for other purposes."

which act recites at the close of section 7 (p. 233, 234, Rec.):

"*And provided also*, That the confirmation of all the said claims provided for by this act, shall amount only to the relinquishment forever, on the part of the United States, of any claim whatsoever to the tract of land so confirmed or granted."

These are all the papers offered bearing upon proceedings before the Commissioners for ascertaining claims and titles to lands in West Florida.

XVI.

That Exhibits 21 and 22, pp. 234–238, Rec., purported to be respectively: Exhibit 21—A deed from Gregario Caro to James Fitzsimmons, Samuel Smythe and John Chabeaux, of property the description of which materially differs from that in the grant to Gabriel de Rivas, dated October 22, 1817; and Exhibit 22—A deed of Fitzsimmons to John Chabeaux, of an undivided one-third

part of the tract of land of 300 arpens, which he purchased in copartnership with Samuel M. Smythe and John Chabeaux, as appears by deed of October 22, 1817, dated November 22, 1819. These documents, which are in English, are certified to under date of May 6, 1885, by F. E. de la Rua, Keeper of Public Archives, West Florida, under his private seal (having no official seal, by loss thereof) as true copies from Book B of Deeds, and Public Archives, Book B, respectively. Neither document has anything on it indicating when it was filed, or that it was ever a public document, in the custody of a public official.

XVII.

Exhibit 24, purporting to be testament a de Thomas Marshall y Joseph Marshal, in English, and bearing date October 18, 1814. See Exhibit 24, pp. 238, 239, Rec., and filed as a part of said Exhibit, accompanied by certain documents in Spanish extending from p. 240 to p. 300, Rec., was offered, as stated by counsel for defendants (p. 238, Rec.)—

"for the purpose of showing the authenticity of the proceedings relating to this particular tract of land, because found at the same place, signed in large part by the same parties, and having the same general appearance."

The property described in this purported will is not the property in question, and the Spanish papers purporting to relate to proceedings under the sale have no reference to the property in question. There is nothing in any of the papers in Exhibit 24 to show that it was ever a public document. It is not under the seal, or register, of any public official, and there is no testimony whatsoever offered to show where, when, or by whom it was found, or how it ever found its way into the Spanish archives. The only thing in the record bearing upon

whence it came is a statement of counsel, that he offers it because found at the same place as the other documents; yet no evidence of when or where the other documents were found is offered. There was no translation of this document offered in English, but a translation will be found pp. 399–457, Rec., made by requirement of and for use in the Circuit Court of Appeals of the 5th Circuit, at the time this case was before that court.

XVIII.

Defendants then offer (p. 238, Rec.) what purports to be a certified copy of a partition of this property between John Chabeaux, Louis de Conde Morant, and Lorenz Millaudon, which document is marked "Exhibit 27," and will be found pp. 312–314, Rec., and is certified to under date of May 16, 1885, by A. E. de la Rua, Keeper of Public Archives, West Florida, under his private seal (the official seal being lost or misplaced) as a true and correct copy of partition between the parties therein, as the same remains of record in his office, in Public Archives, Book of Deeds B.

The date of this purported deed is October 1, 1818. It is in English, and there is nothing to indicate when it was filed, or that it was ever a public document in the custody of a public official.

XIX.

The court permitted William Fisher and W. A. Blount to testify that the Pensacola City Company and one Brainard, respectively, had paid taxes on this property (pp. 303–310, Rec.), without first requiring the tax receipts to be produced or their non-production to be accounted for.

XX.

That Exhibit 31, pp. 319–321, purporting to be a sheriff's deed from James W. Exum to John Brosnham

and Henry Michalet, and reciting that it was to satisfy a judgment against John Chabeaux, deceased, for $1,243.60, and that it conveys a five undivided one-eighteenth part of the tract of land, 300 arpens, fronting the Bay of Pensacola and Bayou Texar, about one mile from the city of Pensacola, and a consideration of $80.00, and dated the 6th of January, 1834, is unaccompanied by any evidence of the validity of the judgment and execution, and the deed on its face recites that the judgment was obtained against John Chabeaux, deceased. It is certified to as a copy under the hand and seal of the clerk of the Circuit Court, but neither the date of the filing nor recording of the original is shown.

Exhibit 28, pp. 314–316, purports to be a conveyance by one Brosnham and wife and Henry Michalet and wife, for the same property described in Exhibit 31, above, for a consideration of $1,200.00, dated November 6, 1834. It is certified to as a true and correct copy by the clerk of the Circuit Court in 1887, but not under seal. There is no date of filing given, but the date of record is put down as October 25, 1835.

Exhibit 30, pp. 318, 319, purports to be a sheriff's deed to Walter Gregory of a three undivided one-eighteenth interest in 300 arpens, called the Rivas land, for a consideration of $3,376.00, February, 1835. On its face the deed purports to have been made to satisfy a decree in chancery against unknown heirs.

Exhibit 29, pp. 316, 317, Rec., recites a conveyance by Lorente Milloudon and wife to William H. Chase of a four undivided one-eighteenth interest in a piece of land lying, situate and being on the Bay of Pensacola, and within the corporate limits of Pensacola, known as the Rivas tract, in consideration of $31,800.00, under date of January 23, 1837. There is no evidence of from what source the grantor acquired title. He is referred to as a

citizen of New Orleans. The purchase is indefinite, and it is incredible that $31,800 should have been paid.

The clerk of the court of Escambia County, Florida, certifies to this being a correct copy of the deed remaining of record in his office in Book B of Deeds, p. 242, and of date of record February 14, 1837. This certificate is given in 1887, is not under seal and there is no date of the filing of the document.

Exhibit 31 (pp. 321–336, Rec.), purports to be the deeds of a merger under date of January 13, 1837, of all the lands taken in the name of Walter Gregory and W. H. Chase, in trust for the Pensacola Land Company, organized December 8, 1835, into the Pensacola City Company, an association. Exhibit 32 (pp. 336–340, Rec.), purports to be the deed May 13, 1870, whereby the Pensacola City Company, corporation, acquires all the property of the Pensacola City Company, a joint stock association. There is no evidence offered of the authenticity and genuineness of either of these deeds, or of their ever having been recorded.

XXI.

"And the said plaintiffs by their counsel, did then and there, in writing, request the said judge to deliver to the jury then and there sitting, the following instructions:

"'1st. A complete Spanish grant of 1806 was sufficient to invest in the grantee and in his heirs all right and interest in the property granted.'

"But the said judge did then and there refuse to give the same to the said jury.

"And the said plaintiffs by their counsel did then and there except to said refusal.

"And this constitutes plaintiff's 7th exception.

"And the said plaintiffs by their counsel did then and there, in writing, request the said judge to deliver to said jury the following instructions:

"'2nd. That such a complete grant was perfect and

need not be presented to or confirmed by the American commissioners, and that any *ex-parte* action by which other parties than the grantees obtained and (any) confirmation of this title or acknowledgment of any transfer thereof, unless it be proved that the original grantee or his heirs were represented in such proceeding before the American commissioners, were and are not binding on the heirs of such grantees.'

"But the said judge did then and there refuse to give the same to said jury.

"And the said plaintiffs by their counsel did then and there except to the refusal of the court to give said instructions to said jury.

"And this constitutes plaintiff's 8th exception.

"And the said plaintiffs by their counsel did then and there request the said judge to deliver to the said jury the following instructions:

"'3rd. That Spanish official document purporting to sell this property in Oct. 21st, 1817, must be shown to be the official records from the Spanish archives, and must bear the original certificate of filing, in the office of the proper custodian of records under the Spanish government, and the same must have also been duly recorded or registered in the proper conveyance records under the Spanish government and must bear the proper certificate thereof.'

"But the said judge did then and there refuse to give the same to the said jury.

"And the said plaintiffs by their counsel did then and there except to said refusal.

"And this constitutes plaintiff's 9th exception.

"And the said plaintiffs by their counsel did then and there request the said judge to deliver to the said jury the following instructions:

"'4th. That a party relying on a document or deed must prove the genuineness of the same.'

"But the said judge did then (and) there refuse to give the same to the said jury,

"And the said plaintiffs by their counsel did then and there except to the refusal of said judge.

"And this constitutes plaintiffs' 10th exception.

"And the said plaintiffs by their counsel did then and there request the said judge to deliver to the jury the following instructions:

"'4th. That where the party relies on a deed as an ancient document, evidence of its antiquity must be furnished, or the party must show that the same has been constantly kept in the archives.'

"But the said judge did then and there refuse to give the same to the said jury.

"And the said plaintiffs by their counsel did then and there except to said refusal.

"And this constitutes plaintiffs' 11th exception.

"And the said plaintiffs by their counsel did then and (there) request the said judge to deliver to the said jury the following instructions:

"'6th. That where documents are admitted in evidence and it is claimed that said documents are authentic or are spurious or forged, that it is for the jury to decide these questions of fact and they are empowered to consider the time of the production of said documents and all the other surrounding facts in reaching this conclusion.'

"But the said judge did then and there refuse to give the same to the said jury.

"And the said plaintiffs by their counsel did then and there except to said refusal.

"And this constitutes plaintiffs' 12th exception.

"And the said plaintiffs did then and there by their counsel request the said judge to deliver to the said jury the following instructions:

"'7th. That if the jury find that said documents are genuine and authentic then it is for the jury to decide if they purpose to transfer the property in question in this suit, away from the estate of the ancestor from whom plaintiffs claim.'

"But the said judge did then and there refuse to deliver the same to the said jury.

"And the said plaintiffs by their counsel did then and there except to said refusal.

"And this constitutes plaintiffs 13th exception.

"And the said plaintiffs by their counsel did then and

there request the said judge, to deliver to the said jury the following instructions:

"'8th. That in reaching the conclusions they have a right to find out whether the property therein was sufficiently described to transfer ownership to the purchaser.'

"But the said judge did then and there refuse to deliver the same to the said jury.

"And the said plaintiffs by their counsel did then and there except to said refusal.

"And this constitutes plaintiffs' 14th exception.

"And the said plaintiffs by their counsel did then and there request the said judge to deliver to the jury the following instructions:

"'9th. They have also the right to decide whether this was a partition of succession sale and if the former whether the same was signed by the proper parties.'

"But the said judge did then and there refuse to deliver the same to the said jury.

"And the said plaintiffs by their counsel did then and there except to said refusal.

"And this constitutes plaintiffs' 15th exception.

"10th. And the said plaintiffs by their counsel did then and there request the said Judge to deliver to the said jury the following instructions:

"'10th. That a husband under neither the Spanish, civil or common law can stand in judgment for his wife or appear in any judicial proceeding for her in any way where her rights to real estate are concerned unless he be authorized in writing to do so by the wife, or be joined with the wife in the action.'

"But the said judge did then and there refuse to deliver the same to the said jury.

"And the said plaintiffs by their counsel did then and there except to said refusal.

"And this constitutes plaintiffs' 16th exception.

"And the said plaintiffs by their counsel did then and there request the said judge to deliver to the said jury the following instructions:

"'11th. That a husband can not sell or sign away the separate estate of his wife without her written consent, signed by her.'

"But the said judge did then and there refuse to deliver the same to the said jury.

"And the said plaintiffs by their counsel did then and there except to said refusal.

"And this constitutes plaintiffs' 17th exception.

"And the said plaintiffs by their counsel did then and there request the said judge to deliver to the jury the following instructions:

"'12th. That the property inherited by the wife from her parents is her separate property.'

"But the said judge did then and there refuse to deliver the same to the said jury.

"And the said plaintiffs by their counsel did then and there except to the said refusal.

"And this constitutes plaintiffs' 18th exception.

"And the said plaintiffs by their counsel did then and there request the said judge to deliver to the said jury the following instructions:

"'13th. That not only the husband can not sell the property of his wife or sign away her rights to real estate, but even where the wife signs the act with him if she be not first examined by the notary separately and apart from her husband, the deed is void, although the purchaser has paid the consideration and gone into possession of the property.'

"But the said judge did then and there refuse to deliver the same to the said jury.

"And the said plaintiffs by their counsel did then and there except to said refusal.

"And this constitutes plaintiffs' 19th exception.

"And the said plaintiffs by their counsel did then and there request the said judge to deliver to the said jury the following instructions:

"'14th. That under the statutes of this State the decision by a judge in a case in which his brother-in-law is interested is absolutely void.

"But the said judge did then and there refuse to deliver the same to the said jury.

"And the said plaintiffs by their counsel did then and there except to said refusal.

"And this constitutes plaintiffs' 20th exception.

"And the said plaintiffs by their counsel did then and there request the said judge to deliver to the said jury the following instructions:

"'15th. That an injunction issued in such a case is absolutely void and a party deprived of possession by such illegal dispossession or injunction is not legally dispossessed thereby, because the party obtaining said illegal decree can not take advantage of his own wrong.'

"But the said judge did then and there refuse to deliver the same to the said jury.

"And said plaintiffs by their counsel did then and there except to said refusal.

"And this constitutes plaintiffs' 21st exception.

"And the said plaintiffs by their counsel did then and there request the said judge to deliver to the said jury the following instructions:

"'16th. That in all cases where the wife is required to sign away her interests that the provision of section 1958 Florida Revised Statutes must be followed, and we ask your honor to read this section to said jury.

"'That as to sales, conveyances, transfers or mortgages of the wife's separate estate, prior to 1835 both the husband and the wife must sign, according to section 1969 of the Revised Statutes of Florida, which section we also request the court to read to the jury.'

"But the said judge did then and there refuse to deliver the same to the said jury.

"And the plaintiffs did then and there except to said refusal.

"And this constitutes plaintiffs' 22nd exception.

"And thereupon on conclusion of the request to charge aforesaid, one of plaintiffs' counsel (Mr. E. T. Davis) then and there proceeded to argue the case in behalf of plaintiffs, before the court and to the said jury.

"Whereupon on the conclusion of said argument, the defendants' counsel (Mr. W. A. Blount) announced to the court that he had a motion to make to the court.

"And the said judge did then and there order the said jury to retire, and the said jury did then and there retire from the courtroom.

"Whereupon the said defendants by their counsel (Mr.

W. A. Blount) moved the court, that the said judge should direct the verdict, and that the court should instruct the said jury to render a verdict for the defendants in the case.

"And the said plaintiffs by their counsel did then and there object to said motion, on the grounds that the evidence and records introduced, disclosed many and various issues of fact, for the jury to pass upon, which counsel for plaintiffs set forth, by reviewing before the court all the facts brought out by the evidence at great length.

"But the said judge did then and there overrule plaintiffs' objections to said motion in words and figures as follows:

"'Now, the motion here is to take from the jury the consideration of this case, because there are no facts for them to pass upon and that the facts are of such a character and of such consequence as would not give the privilege of finding a verdict for the plaintiffs, and that if they should find a verdict for the plaintiff the court should set aside the verdict because of the sparseness of the facts, and where it is the case the court does not hesitate, and has not several times, to give such instructions in certain cases.

"'The plaintiffs' counsel here has seen fit to oppose it in this case and the plaintiffs contend that there are certain facts which the jury should pass upon; first in regard to the accurateness of the records that have been produced here and their force and validity and authenticity and so on, and second: whether Mr. Fisher held adverse possession to this property since his appointment as receiver; since the decree of Judge of the Circuit Court by Judge McLellan.

"'As to the first division of that argument I understand the counsel to make charges as to the validity of these documents, beginning with the will and the proceedings that took place at the sale of the property, the protocol, the witnesses thereto, and the absence of certain signatures.

"'As I understand the plaintiffs' case, they have made it their purpose to ask the court to allow the jury at this date to decide and for the court to give the jury the law as

to what ought to carry, and then tell the jury whether or not the Spanish officers who prepared these papers, upon the proofs of title to this property, and to tell the jury whether or not the facts existed that makes these papers at time valid or not. The ruling of the court on this matter will cover all of this ground.

"'The court, as I stated yesterday, is of the opinion, and when papers come from the proper custody, and they appear to have been in this custody, and are regular upon their face and they are both in this case, as the evidence produced tended to show, that they were treated as valid papers by the officers at that time, and by all subsequent officers that came in charge or possession of them; that these papers, the court will not presume and will not permit a jury to presume, that there were any error therein committed by the officers at that time, which rendered them invalid, null and void, as to the distinct interests long since acquired thereunder.

"'In other words, the court understands the request of the plaintiffs' counsel to amount to this: that the jury is to be asked to pass upon the validity in law, of these ancient papers."

"'As to the adverse possession of Mr. Fisher from the time of the decree of Judge McLellan to the present time, the court does not at this moment recall any testimony of such force and character that should go to the jury and permit them to determine that Mr. Fisher has not been in adverse possession of this property under that decree of Judge McLellan.

"'That being the idea the court takes of the case, it would not, in the opinion of the court, be right to submit the case to the jury and let them find for the plaintiffs, if they should do so, and then immediately set the verdict aside under the view the court takes of the law; that is what I would be compelled to do.

"'It is best for both sides in this case for the court to make its ruling now and direct the jury, and give them the full opportunity of saying anything in law that can be said on all the papers at once, without waiting for further trial.'

"And the said plaintiffs by their counsel did then and there except to the ruling of said court.

"And this constitutes plaintiffs' 23rd exception.

"And the said judge did then and there while the jury was at the bar, give instructions to the said jury, in words and figures as follows:

"'At the request of the counsel, I repeat what I have said about being interested in this case or any land in connection therewith:

"'I never had any interest in this tract or any part of it; no relative or member of my family ever had or has any interest directly or indirectly, in any part of the tract. The facts in connection therewith have been signed under and are filed.

"'Mr. Hooten, a member of the firm of Messrs Watson & Co., has filed an affidavit the other day, setting (forth) the facts.

"'Gentlemen of the jury: After a thorough discussion of the law in this case by the counsel, the court is of the opinion that the plaintiffs have no ground upon which to recover. That being the case, if the case had been left to you to determine and you had found a verdict for the plaintiffs, the court would have been compelled to set that verdict aside immediately; a new trial would have followed and all of the same matters gone over again.

"'The course I am about to take to terminate the trial in this court at present and enable the plaintiffs at once to take their appeal to the Court of Appeals and any determination made upon it as that court may think best; therefore I will instruct you, and you will find your verdict in accordance therewith, and you will find your verdict for the defendants in this case.'

"And the said plaintiffs by their counsel did then (and) there except to the instructions and directions by the said court to the said jury.

"And this constitutes plaintiffs' 24th exception.

"And the said judge did then and there further give instructions to said jury, in words and figures as follows:

"'Juries are to pass upon questions of fact; the court is of opinion that the questions that have been brought up are questions of law, and those questions of law are always for the court and not for a jury.

"'Juries are not supposed to know what makes the legality of regularity of papers; of adverse possession and I know of no facts in this case, in my opinion, to submit to a jury.

"'The court in giving the jury the verdict it gives relieves the jury of any responsibility, and you will give your verdict in accordance and under the direction of the court.'

"And the said plaintiffs by their counsel did then except to the instruction and directions of the said court.

"And this constitutes plaintiffs' 25th exception.

"Whereupon the clerk of the said court writes out the verdict, presents it to the jury, for the signature of its foreman; which verdict is in words and figures as follows:

"'We, the jury, find for the defendents.

"'W. B. FERRIS, *Foreman.*'

"And the said plaintiffs by their counsel did then and there except, while the jury was still at the bar.

"And this constitutes plaintiffs' 26th exception (pp. 375–383, Rec.).

XXII.

Your petitioners respectfully submit that owing to the value of the interests involved, of, to wit, some one hundred and fifty thousand dollars, the numbers of parties whose titles to property are involved, the serious injuries done your petitioners by reason of admitting documentary testimony contrary to the rules so long established by this court for the admission of such testimony, the taking from the jury consideration of questions so clearly within its province, and other errors fully set forth in the petition — that this honorable court should authoritatively and finally adjudicate the matters involved in this case, or such of them as to the court may seem proper.

XXIII.

Wherefore your petitioners respectfully pray that a writ of *certiorari* may be issued out of and under the seal

of this court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding said court to certify and send to this court, on a date certain to be therein designated, a full and complete transcript of the record and all proceedings of said Circuit Court of Appeals in said case, therein entitled *Florida McGuire et al., plaintiffs in error*, v. *William A. Blount et al., defendants in error, No. 1202;* to the end that the said cause may be reviewed and determined by this court, as provided for in section 6 of the act of Congress entitled "An Act to establish circuit courts of appeal and to define and to regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes. Affirmed March 3, 1901." Or that your petitioners may have such other and further relief or remedy in the premises as to the court may seem appropriate and in accordance with the said act and with recognized principles of law applicable to the matters set forth in the petition; and that the judgment of said Circuit Court of Appeals in said cause, and every part thereof, be reviewed by this honorable court. And your petitioners will ever pray.

H. A. HERBERT,
BENJAMIN MICOU,
E. T. DAVIS,
SIMEON S. BELDEN,
Counsel for Petitioners.

DISTRICT OF COLUMBIA, }
City of Washington. }

Benjamin Micou, being duly sworn, says that he is one of the attorneys and counsel for Florida McGuire *et al.*, petitioners for a writ of *certiorari* from the honorable Supreme Court of the United States directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding said court to certify and send to the Supreme Court a full and complete transcript of the record and all proceedings of said Circuit Court of Appeals in a case entitled *Florida McGuire et al., plaintiffs in error*, v. *William A. Blount et al., defendants in error, No. 1202;* and as attorney and counsel for petitioners has had charge for petitioners of the case in the matter of preparing the foregoing petition for a writ of *certiorari*. That he has read the said petition, by him subscribed, and that the facts therein stated are true to the best of his information and belief.

BENJAMIN MICOU.

Sworn to and subscribed before me, this 8th day of October, 1903.

CHARLES R. HARBAN,
Notary Public.

FILE COPY.

Office Supreme Court U.S.
FILED
OCT 28 1903
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1903.

FLORIDA McGUIRE AND MATILDA CARO,
Petitioners,
v.
WILLIAM A. BLOUNT, WILLIAM FISHER,
PENSACOLA CITY CO. *et al.*

No. 449

BRIEF

In Support of Petition for Writ of Certiorari.

HILARY A. HERBERT,
BENJAMIN MICOU,
E. T. DAVIS,
SIMEON S. BELDEN,
Counsel for Petitioners.

October 8, 1903.

Supreme Court of the United States.

OCTOBER TERM, 1903.

FLORIDA MCGUIRE AND MATILDA CARO,
Petitioners,
v.
WILLIAM A. BLOUNT, WILLIAM FISHER,
PENSACOLA CITY CO. *et al.*
} No.———

BRIEF

In Support of Petition for Writ of Certiorari.

STATEMENT OF THE CASE.

Petitioner's Case.

Your petitioners prove that they are the heirs of Gabriel de Rivas (p. 33, Rec.) and that Gabriel de Rivas died seized and possessed of 300 arpens of land (described pp. 30, 31, Rec.), the said land having been granted to him by the Spanish Government (pp. 27–29, Rec.). This grant is by all parties admitted to be the origin of title to this property.

The sworn statement of Fernando Moreno, found in Exhibit 17 (p. 230, Rec.), offered by respondents, is that Gabriel de Rivas commenced improving the said tract of land between four and six months after he obtained the grant, continued the cultivation more than three years, and had about four acres cleared, enclosed and in cultivation.

Your petitioners proved possession of the property. A. V. Caro knows that his father claimed this land for his wife, got wood off it, and the witness himself lived there in 1869, and is still living there and acts as agent for the other heirs (pp. 33 and 34, Rec.).

Ephriam J. Pleasants was told in 1867 by A. V. Caro, that he Caro was agent, and stayed on the land by permission of Caro, and paid rent to him (pp. 69, 70, Rec.).

Alphonse Villeneuve had lived on the land 30 years next August, and Mr. Caro gave him the right to live on it (p. 71, Rec.).

W. E. Leggett states that Mr. Caro put him and his mother there to see that nobody trespassed. That he was there a year or two, and that this was about 30 years ago (p. 71, Rec.).

Alexander Robinson had lived on the land for 27 years, and had gone there by the permission of Mr. Caro, somewhere about 1870 (p. 72, Rec.).

June 17, 1889, tenants were ordered and directed to make payment to one William Fisher, receiver for this property, by a decree of the Circuit Court of Florida for Escambia County (pp. 90–93, Rec.); which decree petitioners claim, for reasons which will be hereafter discussed, was null and void. The decree was afterwards affirmed by the Supreme Court of Florida in, to wit, 1895, *Wilkins et al.* v. *Pensacola City Co. et al.* 36 Fla. 36; and there is a motion now pending in the Supreme Court of Florida to vacate this judgment. The litigation out of which came the decree ordering the dispossession of petitioners is not yet settled. The statute of limitations has not yet begun to run, and said statute was not and could not have been successfully pleaded below in the present case.

The bill of complaint filed in the Circuit Court of Florida for Escambia County resulting in an order for

the appointment of a receiver in 1889, and sworn to by one of the complainants in that suit, Peter Knowles, through whom both William A. Blount and William A. Fisher, respondents here claim, charged A. V. Caro with making sales of parts of the land, and writing to tenants and selling wood cut from the land (p. 62, Rec.), all acts evidencing possession by Caro; and at bottom of p. 64 to p. 65, Rec., the complaint named some thirty persons holding possession of portions of the property as tenants of defendants in that suit, all as having acquired title or possession from said defendants, the defendants in that suit being the Rivas heirs. The decree rendered by Judge McLellan in 1889, appointing a receiver for the property (p. 93, Rec.), orders some forty odd persons to make payment of rent to the receiver, all being persons who had been renting from defendants in that suit, the Rivas heirs, through A. V. Caro.

Bearing upon possession since 1889 is the testimony of A. V. Caro, that he is still living on the tract (p. 34, Rec.). From the testimony of William Fisher (p. 89, Rec.), appointed receiver as above stated, it certainly is not very clear that he ever took possession of this property, even if his holding as receiver for the interest of all parties concerned could be considered as adverse possession to your petitioners here; and further he does not set up possession under this appointment, or possession at all as a defense to this suit, but relies upon deeds of recent date to certain portions of the tract (pp. 352–369, Rec.). Furthermore, it appears that both respondents William Fisher and William A. Blount once since 1889 have recognized ownership by A. V. Caro in this tract. J. W. Frater (pp. 84, 85, Rec.), testifies that he bought five lots of the tract from A. V. Caro. This was about 1892, and that he sold these five lots to William Fisher. That he did not purchase directly any property from any one except

Caro, and that in making the purchase W. A. Blount was his lawyer, prepared the deeds, and that he (Frater) accepted what Blount did. W. A. Blount was counsel in the present case in the court below, and William Fisher was a witness. Neither of them contradicted Frater.

If the contention we will make be sound, that the judgment of the Circuit Court of Escambia County, Florida, was null and void, and that your petitioners had been in possession previous to that time for some eighty-three years, and their possession has never been disturbed save as it may have been affected by that judgment, then the status of respondents is defined by the case of *Christy* v. *Scott*, 14 How. 392, quoted in Sec. IX of the Petition. They are mere trespassers, and the maxim that the plaintiff must recover on the strength of his own title and not on the weakness of defendants does not apply, but the previous actual possession of petitioners is sufficient to enable them to recover as against respondents, mere trespassers, who entered without any title.

Respondents' Defense.

The following respondents, defendants below, W. A. Blount (p. 8, Rec.), William Fisher (p. 9, Rec.), Thomas C. Watson (p. 11, Rec.), James M. Bullard (p. 12, Rec.), John H. Williams (p. 13, Rec.), all plead not guilty; the defendants below, Pensacola City Company, was not found (p. 5, Rec.); and R. A. Fisher (p. 10, Rec.), and Julia A. Young (p. 12, Rec.), each enter a disclaimer.

Of the defendants pleading not guilty, James M. Bullard and John H. Williams offer no deeds to themselves from any one. W. A. Blount, William Fisher and Thomas C. Watson offer deeds of recent date, from parties entire strangers to the title, and these recent deeds, from parties of the origin of whose title there is no evidence, constitute the entire defense of respondents, save an en-

deavor to show an outstanding title in another, by alienation of the property from the Rivas estate as far back as 1817, there being no attempt to show a connection of this alienation with respondents' title. Upon such a defense the United States Circuit Court for the Northern District of Florida (pp. 382–383, Rec.) instructed the jury to find for defendants, respondents here, and the clerk thereupon wrote out and presented to the foreman the verdict the jury was to find.

Decrees of Judges Maxwell and McLellan.

As set forth in the Petition, and substantiated by the Record, at the time of the decree rendered in 1879 in the Circuit Court for Escambia County, Florida, whereby A. V. Caro was enjoined from collecting the revenues of rents, and the tenants were ordered to attorn to Judge A. E. Maxwell for rents, the said Judge A. E. Maxwell, rendering this order, was President of the Pensacola City Company, and was also a brother-in-law of W. H. Davidson, and of W. E. Anderson, both parties complainants in the suit (pp. 57, 58, p. 307, Rec.). And in 1889, when the Circuit Court of Escambia County, Florida, acting through James F. McLellan as judge, appointed William Fisher as receiver, and decreed that the tenants on this land should pay rent to him, the said James F. McLellan was a brother-in-law of C. C. Younge, one of the complainants in that suit (p. 73, Rec.).

The statute law of Florida at the time of these decrees is set out in Section VII of the Petition; and we believe absolutely disqualified Judges Maxwell and McLellan to render the decrees and made said decrees null and void; and no rights accrued to any one under them, and that your respondents show no possession adverse to petitioners that would made them, as against your petitioners, anything more than mere trespassers and intruders.

"The statute delared that 'no judge of any court can sit as such in any cause to which he is a party, or in which he would be excluded from being a juror by reason of consanguinity or affinity to either of the parties.' p. 504 held that 'this statute disqualifies a justice of the peace to sit in a case where a corporation is a party and his brother is a stockholder therein.'"

Place v. *The Butternuts Woolen & Cotton Mfg. Co.* 28 Barb. 507.

"Before the commencement of the trial the defendant asked the justice to dismiss the cause, upon the ground that the justice's brother was a party defendant, being one of the stockholders in the company sued, and offered to prove the facts upon which the motion was based. The justice excluded the offer and overruled the motion. This ruling is sought to be upheld upon two grounds:

"1st. That a stockholder in a corporation sued is not a party to the suit, within the meaning of the statute referred to.

"2nd. That the offer made was properly rejected upon the ground that no issue was made by the pleadings, involving the jurisdiction of the justice. (p. 507.)

"J. Gray said: 'The decision of the justice in this case was against the interest of his brother; that however does not change the question. His relationship to a party beneficially interested was a legal prohibition of his right to sit. The presumption of bias could not be repelled by his impartial act (*Oakley* v. *Aspinwall*, 3 Const. 547). We are not therefore called upon to determine whether he acted well or ill; the meaning of the statute, says Cowan, justice in *Edwards* v. *Russell* (21 Wend. 64), is not merely that the interests of the parties are unsafe, but the general interests of parties. The points made by both parties show that the want of an issue in the pleadings involving the jurisdiction of the justice was an afterthought and raised now for the first time in the cause, to uphold his ruling in excluding the offer to prove him to be the brother of one of the parties beneficially interested. No issue was necessary, for the reason that his acts were void; and whether the question was raised on the trial or not they could be inquired into

collaterally. In *Edwards* v. *Russell* there was no issue involving the relationship; but after issue, as in this case, the objection was raised that the plaintiff and the justice were cousins. No evidence was given, but the justice said it was alleged by the objections that he and the plaintiff were cousins; that such was the general understanding, and gave judgment against the plaintiff for costs.

This court acted upon what was said by the justice, and held that enough was collectable from the return to warrant the conclusion that the relationship was admitted by him, and affirmed the judgment. In *Post* v. *Black* (5 Denio, 66) nothing was said on the trial touching the alleged relationship, but the affidavit upon which the certiorari was allowed stated the relationship, and the justice in the case, as in duty bound, stated his relationship to the party, and the judgment was reversed. All that is necessary to be known to overturn the judgment in such a case is, that the justice is related to one of the parties, and it matters not how or when it is shown, provided it comes in such shape as to entitle it to credit. No issue was necessary to admit the proof offered (2 Cowan's Treatise, 3d ed. 334). I am therefore of opinion that the judgment of the county court, and that of the justice, should be reversed."

Same case, *Butternuts Woolen and Cotton Mfg. Co.* 28 Barb. 511–512.

That in the above case the judgment of the County Court, as well as that of the justice, was reversed, shows clearly that the affirmation of the null and void judgment by a higher court can not give the judgment any effect.

Defense of Outstanding Title.

Your respondents do not claim under the Pensacola City Company, in whose favor these decrees were rendered, but such respondents as attempt to show they have title at all claim under recent deeds taken all the way from 1896 to 1900, from strangers to the title; and all the defense they make is these deeds, under which they

do not attempt to show possession, and an outstanding title in which they make no claim to have an interest. A totally inadmissible defense as against the prior possession by petitioners.

"The rule as to rights resulting from prior possession, we think is correctly stated by the Court of Appeals of Virginia, where it holds that where a party in peaceable possession of land is entered upon and ousted by one not having title to, or authority to enter upon the land, the party ousted may recover, in ejectment upon his possession only; and his right to recover can not be resisted by showing that there is or may be an outstanding title in another, but only by showing that defendant himself either has title or authority to enter under title. 11 Gratt. 174, in the English cases of *Read & Mospeth* v. *Erington Croke*, E. 1. iz., 321, *Bateman* v. *Allen*, *Ib*, 437, and *Allen* v. *Rivington*, 2 Sands, 111, it was shown that the plaintiff was in possession, and that the defendant entered, without title or authority, and the court held that it was not necessary to decide upon the title of the plaintiff, and gave judgment for him."

Seymour & Simpson v. *Cresswell*, 18 Fla. 40.

"A plaintiff in ejectment can recover against one not showing a better right, or an intruder."

Ashmead v. *Wilson*, 22 Fla. 258, 259.

"That where both parties claim title to land from a common source, the defendant is estopped from setting up an outstanding title with which he is disconnected."

Doyle v. *Wade*, 23 Fla. 98.

"As to an intruder, or trespasser, or to one who does not show a better right, possession of lands, like the possession of personal property, is *prima facie* evidence of title, and will support ejectment."

Dothard v. *Denson*, 72 Ala. 544.

Outstanding Title Not Shown.

Before undertaking to discuss in their order the proceedings had in the United States Circuit Court for the Northern District of Florida, we would say that the docu-

ments by which defendants seek to show that this property in 1817 passed from the Rivas heirs, independently of the question of genuineness, authenticity, and admissibility as evidence, are not proof of the alienation of the property. Gabriel de Rivas, it is admitted, acquired this property under a grant from Spain in 1806, and the genuineness and authenticity of the grant, and its record at the time it was made, in conformity with requirements of law, are all proved; and the grant is not disputed. Respondents, however, seek to establish that Gabriel de Rivas left a will, and in administering his estate under that will this property was, in 1817, sold, the title passing at that time out of his heirs, and finally finding lodgment, through a very imperfect chain of conveyance, not in defendants, but in the Pensacola City Company. The beneficiaries under the purported will were the heirs of Gabriel de Rivas, through whom petitioners claim. The defendants offer what counsel calls:

Proceedings of Maria Moreno to sell this particular piece of property for payment of debts and disbursement of proceeds, Exhibit 13, pp. 155–187, Rec. Translation thereof, Exhibit 14, pp. 187–222, Rec. (pp. 199–204 being a copy of the purported petition for the sale of this particular property, found pp. 147–155).

These documents are offered to prove an administration under a will covering a sale of the property in question.

The Sale Under the Alleged Will.

The law at the time was as follows:

"The executors ought to publish the testament within a month, under the penalty of losing their legacy; and, if there was none left, then of paying the tenth, and, moreover they are obliged to fulfill the will of the testator within a year, at farthest, countable from the death of

the testator, the act of one, or more, in case the whole can not be present, being valid.

"If it should happen that the executors are neglectful in complying with their duty or obligation, they shall be compelled to it by the bishop, and not obeying he shall appoint other executors."

1 White's Recop. 127, 128.*

Yet the document offered refers to a sale of property nine years after the purported death of Gabriel de Rivas, *i. e.*, in 1817.

The document (p. 147, Rec.) is addressed to "His Ex. the Governor," and purports to be signed by Mr. Eugenia Anto Sierra, Testamentary Executor of Gabriel de Rivas. This person, by the purported will was named as guardian to the minor children, and Maria Moreno as administratrix. Her name does not appear to this document, or anywhere as giving assent to what was done. It bears date of September 13, 1817. It sets out that it appears to the writer that the accounts are in conformity with the heavy expenses incurred with the widow's numerous family. Refers to the cost of repairing property, and heavy expenses owing to sickness in the family; and then (and this is all that is said relative to this land, or relative to petitioning anything):

"And as to what refers to the 300 arpens of land, they should be valued and sold to add the proceeds to the common fund and make partition to the minors to secure to every one what may correspond. It being at the wise authority of the tribunal to decree what according to justice it may deem proper, I having answered the proceedings that were served upon me of the date of the 9th instant."

* White's Recopilacion is a work promulgated and sanctioned by an act of Congress, and consequently this court can take judicial notice of the same. Furthermore, this court has held that it was as much bound judicially to notice the laws and regulations of territory ceded to the United States, as the laws of a State of the Union. *United States* v. *Chaves*, 159 U. S., 459.

This document, styled by counsel a petition by Maria Moreno, whatever it may be, certainly is not the proceedings before a tribunal authorized to sell lands. It is dated September 13th, and refers incidentally to the signer of the document having answered proceedings that had been served upon the writer "on the 9th instant." What these proceedings were, or before whom, does not appear. The Governor of West Florida, under the Spanish law then in force, to whom it must be supposed that Eugenio Anto Sierra is writing, had no authority to administer the estates of decedents. If respondents propose to prove a sale they must show the proceedings of some tribunal that had jurisdiction to make such sale. The indefinite reference in this document to having answered proceedings that were served on the writer, and to 300 arpens of land, is not legal proof of what the proceedings were, or that they related to this land now in question.

Then follows what purports to be the return of the service of a notice of some character, and then what purports to be a statement of Eugenio Anto Sierra, before "Your Ex."

"That it having been ordered by the tribunals by the decree of the 17th instant, to value the arpens of land belonging to this estate to sell them at public outcry, etc., your excellency will please order that by the same tribunal two appraisers be appointed to assess the value of the land, and that this be done, that what there is to be carried out."

Here again is a reference to a sale having been ordered on the 17th instant, by the tribunals, but the order of the tribunals is not given, nor a description of the land to be sold. Reference to an order of sale in a report to the Governor is not legal evidence of an order, or of what the order was. Both whether there was an order, or if so

what it was, is left to inference. There is a note by the translator (p. 148, Rec.) to see this order, toward the latter part of this valuation. All we can find that this could refer to is the statement, about the middle of the next page, 149, Rec., dated October 17, 1817—

"Let the valued land be sold at public outcry at the time ordered," etc.,

with the four names, Mosart, Domingo Sausa, Fernendez, and Jose Sevarus, signed to it. On pp. 152, 153, Rec., is found the document relied on to prove a sale. It is as follows:

"In the City of Pensacola on the twentieth of Oct., eighteen hundred and seventeen, in the Audience Chamber, being present Mr. Joseph Masot, Military and Political Commandant of this province, associated with the auditor of war and assessor general thereof, with the view of carrying out the sale that was ordered of the three hundred arpens of land belonging to the estate of Gabriel Rivas, deceased, which after the previous calls that were given with the drum, according to custom were offered at public outcry by Joseph Cortez, he announcing clearly and distinctly the piece of land that was sold and exhibiting the figurative plan and the persons attending the sale being informed, of the locality, amount and price in cash at which it would be knocked down, John Chebeaux bid two hundred and fifty dollars, Gabriel de Rivas five hundred and seventy dollars, the said John five hundred and seventy-one dollars, and then Gregario Caro augmented the bid to five hundred and seventy-two dollars, and the hour having arrived, and the said bid having again in a loud and intelligent voice been cried out by the said Cortez, and there being no other person who offered a higher bid, notwithstanding the said bid being cried out several times, it was ordered by their worships in view of its being the hour fixed for closing the sale, that it be knocked down, which with the three customary

raps was done to Gregario Caro, and that it may appear he signs with the curator and heirs that were present and to their worships to which we give faith.

GREGARIO CARO,
EUGENIO ANT'O SIERRA,
DOMINGO SAUSA,

FERNANDO MORENO,
JOSE CEVALLOS,
GABRIEL RIVAS,
For my wife, Mrs. Paula Rivas:
JOSE ESTAVAN CARO."

This document merely recites what was done with the view of carrying out the sale that was ordered of the 300 arpens of land belonging to the estate of Gabriel de Rivas. It does not show that it was the land contained in the grant to him from the Crown of Spain, nor what 300 arpens it was. It states that the auctioneer announced clearly and distinctly the piece of land that was sold, and exhibited the figurative plan, and that the persons attending the sale were informed of the locality, amount, and price in cash at which it would be knocked down; but it is left entirely to conjecture what piece of land the auctioneer announced clearly and distinctly, what figurative plan he exhibited, and of what locality the proposed purchasers were informed.

It is stated that Gregario Caro was the highest bidder; that it (the property) was ordered by their worships, and was knocked down to him, but the order is not given. Then (p. 153, Rec.) it is stated that the bidding is approved, and as it appears from the former proceedings that Gregario Caro has paid the assistant witness the amount of $572.00 ordered, that this amount be deposited in the public office, while another order is given, and that testimony be issued to the purchaser, of the proceedings of the sale, and of this proceeding, if he solicit the same, that it may serve him as a title in form.

If any testimony issued to serve him as a title, it is not put in evidence. There is no decree offered ordering a sale by any tribunal shown to have jurisdiction of the estates of decedents. There is no deed. There is no evidence of Gregario Caro ever having taken possession under these purported proceedings. The documents are not shown to be official records of any transactions, and respondents certainly can not establish a decree of sale by a competent judicial tribunal and a sale under the decree which it is encumbent upon them to establish, by merely offering documents that refer to a sale having been ordered and having taken place. The persons whose names purport to be signed to these documents are nowhere shown to have been officials at the time of the occurrences recited, nor is it shown that the documents are the record of their official action. What was said in *Sabariego* v. *Maverick*, 124 U. S. 261, where it was attempted to infer the confiscation of property by reference to such confiscation, expressly applies here. In that case the court said:

"Notwithstanding all these recitals, and the inferences and implications that are sought to be derived from them, it still remains that the alleged confiscation of the property of Miguel Losoyo, if it ever took place, could have been lawfully effected only by means of a formal judicial proceeding, which must be primarily proved by the official record of the transaction or a duly certified copy thereof, and, secondarily, in case of its loss, by proof of its previous existence and of its contents. The certificates of other officers referring to it only incidentally and collaterally, although as the basis of their own official action, are not legal proof of the fact itself."

It will be noted, p. 154, Rec., that this Exhibit 12, offered to show the sale of this property, does not even purport to be a full translation of all the proceedings, but it is stated all the proceedings are not fully rendered by translation.

The Proceedings Seriatim.

Previous to the trial in the United States Circuit Court for the Northern District of Florida, as will appear from the Record, pp. 24–26, your petitioners here petitioned the judge of that court to recuse himself, setting out that the wife of the judge had a present and potential interest in the property; and it was expressly stated that it was desired to take the testimony of witnesses in order that any ruling of the court, for or against this formal application, should be of record in this case.

The judge instanter denied this petition, refusing to first hear testimony, giving from the bench his understanding of the circumstances under which a deed had been made to his wife of part of the property, and by her sent back.

The judge who is to try this case admits (p. 25, Rec.) that a purchase of part of this property was negotiated for in the name of his wife, and that a quit-claim deed was sent and returned, but refuses to allow evidence to be offered to show she is still interested. Would not a natural inference from the statement of the judge be, that with a warranty deed his wife would take the property? If the case before him be finally determined according to the verdict he directed the jury to find, there will be nothing to longer prevent a warranty deed being made. Though his instanter opinion, that therefore "the court thinks that she has not any interest in the property in any way whatever, even if the counsel is right as to the rights of Edgar, in case he should have tendered a warranty deed, which I doubt," is sufficient reason for refusing even to hear evidence from the petitioners; still after rendering his decision he placed upon file in support thereof an *ex parte* affidavit made the following day (p. 26, Rec.), without opportunity by your petitioners to cross-examine the deponent.

Caro *v.* Joudon.

At the trial the court should not have permitted the defendants to have offered in evidence a record in the suit of *Caro* v. *Joudon et al.* in the Circuit Court of Escambia County, Florida. See Record, pp. 40–57. It is the record of an action of debt brought in 1869, for watching, taking care of and tending to landed interests in the city of Pensacola, from 1862 to 1865. Neither the record of the pleadings in the case, nor the evidence taken, shows any reference whatever to the property now in question. There is nothing at all in the suit showing that A. V. Caro recognized in any other parties a title in this property. Furthermore, the suit was not against any of your respondents here, or any of the grantors through whom they claim, and had it shown (which it does not) that this land in question was a part of the land for taking care of and attending to which Caro brought suit, that would merely have been evidence tending to show an outstanding title which defendants, as has already pointed out, could not under the circumstances of this case set up as a defense against the claim of your petitioners. The record for any purpose was irrelevant, and should not have been admitted as evidence.

Abstract of Claim.

The court should not have permitted the introduction of the document stated by counsel to be an abstract of claim, which purports to be in the handwriting of the witness, A. V. Caro's father (p. 54, Rec.; Exhibit 3, pp. 56, 57).

The recitals of this document are referred to in Sec. XIII of the petition, and need not be repeated here.

The purpose for which it was admitted, according to the statement of the court (p. 55, Rec.), was to refute

the testimony of Caro, that his father had claimed this property for his mother. As a writing the document was not admissible for any purpose, without proof of its genuineness and legal proof identifying it as being in the handwriting of Joseph E. Caro and signed by him; the statement of A. V. Caro, that the handwriting "looked like his father's, with the exception of the spelling" (p. 54) is not sufficient proof of that. Greenleaf on Ev. sec. 577, 578.

It is not shown at whose request, in whose interest, or for what purpose, this abstract was made. That a public officer certified to the fact of papers being in the office of which he was the custodian, could in nowise and under no circumstances be construed as committing him to endorsing as true the statements that might be found in such papers. As evidence of the deeds themselves, no extracts or abstracts of the deeds could be admissible in evidence. *Bellamy* v. *Hawkins*, 17 Fla. 757.

Sale to Gregario Caro.

The papers offered by the defendants to show the will of Gabriel de Rivas and the administration of his estate under the will, and relied upon to show that in the administration the property in question was sold to Gregario Caro, are to be found pp. 111–222, Rec.

As to the admissibility of any of these papers as evidence: All are offered unaccompanied by any evidence of their being authentic or genuine, and where they purport to be copies, without evidence of the correctness of the copies. All of the preliminary evidence required to entitle the papers to go to the jury for its consideration is wanting. On p. 111, Rec., it was agreed by counsel that the Spanish documents, which seemed to have been received in that morning's mail, came from R. L. Scarlet, Surveyor-General of the United States, Keeper of the Archives, and that he was custodian in 1898.

As to the following documents—

1. The will of Gabriel de Rivas (pp. 111–113);
2. The translation of this will (Exhibit 9, pp. 122, 123);
3. The translation of the probate of the will (Exhibit 10, pp. 124–131);
4. The translation of the proceedings to sell a house (not contended to be on the land in question) by Maria Moreno (Exhibit 11, pp. 138–146);
5. Proceedings to sell this particular piece of property (Exhibit 13, pp. 155–187);

Their authenticity and genuineness, or that they ever were an official record of anything, rests absolutely and solely upon the agreement of counsel that they came from R. L. Scarlet, Surveyor-General, and that he was custodian in 1898; and such of these documents as purport to be translations, whether there is a document in Spanish put in or only the translation, are unaccompanied by any evidence of when, where or by whom they were translated, or that the translation is true and correct.

As to the other documents introduced to establish the administration proceedings under the alleged will of Gabriel de Rivas—

1. Exhibit 8, pp. 114–121;
2. Exhibit 11, pp. 131–138;

they are both certified to by R. L. Scarlet, Surveyor-General for the District of Florida, to include and comprise a true and correct tracing of a

"certain quaderno known as a protocol, which is in the Archives in this office, and in my custody as Surveyor-General of the District of Florida"—

Both certificates bearing date August 26, 1901, and both given under the hand and private seal of R. L. Scarlet. Both documents are in Spanish, and one, Exhibit 8, pp. 114–121, purports to be a copy of the will and probate

thereof; and the other, Exhibit 11, pp. 131–138, purports to be a copy of proceedings to sell a house (not contended to be on the property in question) by Maria Moreno.

The rest of the papers offered to show an administration of the estate of Gabriel de Rivas under his will, are:

1. Exhibit 12, pp. 146–155;
2. Exhibit 14, pp. 187–222.

Both of these are in English. Exhibit 12 is a translation which purports to be a petition of Maria Moreno, as executrix, for the sale of this particular property in controversy. No paper in Spanish of this document is offered. Exhibit 14 is a translation purporting to be of the proceedings of Maria Moreno to sell this particular piece of property for payment of debts. To each is attached a certificate of F. E. de la Rua, that it is

"a correct translation from the Spanish into English of the original manuscript proceedings now in said Archives (the Spanish Archives of West Florida) in the matter of the sale of land of the estate of Gabriel de Rivas, deceased."

Both are given under the hand and private seal of F. E. de la Rua, the first, the 29th of July, 1874; the second, the 27th of August, 1887. The correctness of the translation of neither is sworn to.

Exhibit 12 is accompanied by a further certificate by F. E. de la Rua, not as being in charge of the Spanish Archives or Keeper of the Public Archives of West Florida, but as Clerk of the Court of Escambia County, Florida, which certificate purports to be under his hand and official seal May 1, 1884, and the certificate is:

"That the foregoing sixteen pages contain a true and correct copy from Spanish into English from the original manuscript proceedings in Spanish now in the archives of West Florida in the matter of the sale of land of the estate of Gabriel de Rivas, deceased, duly certified by me as Keeper of the Spanish Archives of West Florida, under

date of 29th of July, A. D. 1874, on file in case of the *Pensacola City Company* v. *A. V. Caro*, in said Circuit Court of Escambia County, Florida."

The defendants attempt to put in evidence what they claim was a will, made in a foreign language and a foreign country, and the proceedings to administer an estate under the same, the date of the occurrences alleged all being before Florida was ceded to the United States by Spain.

Sec. 1110, R. S. of Florida, 1892, provides that to be admissible in evidence the probate of wills must be duly authenticated according to the law of the foreign country where the probate may have been granted. There is absolutely no pretense of compliance with this requirement.

The requirements for proof of the probate of wills in Florida since the same became a State of the Union can have no application, but as it appears that the defendants in offering their evidence attempted to comply with the requirements for proof of domestic proceedings, we will refer briefly to what those requirements are.

To be admissible as domestic proceedings the document offered must be shown to be a copy of the will, letters testamentary or of administration, *recorded in a public office of record in the State*, and certified by the keeper of said record. Sec. 1110 R. S. of Florida.

"Public office of record in the State" doubtless means a State office and would not authorize a certificate from a United States officer, such as a public surveyor, whose records were not records in a State public office. But entirely independently of this, the copy certified would have to be the copy of *a record*, and there is absolutely nothing to show that the papers certified to by either Scarlet or De la Rua are copies of documents *a record* in any public office.

"A deed or any other instrument though actually transcribed upon the public records, is not recorded within the legal acceptance of that word, where there has been no proper proof of its execution, as required by law authorizing a record thereof."

Keech v. *Enriquez*, 28 Fla. 597.

The rule as to the admissibility of evidence of the proceedings before a foreign tribunal, whether the papers offered are in a foreign language or are translations, has been fully set forth by Chief Justice Marshall:

"The paper offered as a true copy from the original proceedings against the *Aurora*, is certified under the seal of his arms by D. Jono de Almeida de Mello de Castro, who states himself to be the Secretary of State for foreign affairs, and the consul certifies the English copy which accompanies it to be a true translation of the Portugese original.

"Foreign judgments are authenticated.

"1. By an exemplification under the great seal;

"2. By a copy proved to be a true copy;

"3. By the certificate of an officer authorized by law, which certificate must itself be properly authenticated.

"These are the usual, and appear to be the most proper, if not the only, modes of verifying foreign judgments. If they be all beyond the reach of the party, other testimony inferior in its nature might be received. But it does not appear that there was any insuperable impediment to the use of either of these modes, and the court can not presume such impediment to have existed. Nor is the certificate which has been obtained an admissible substitute for either of them.

"If it be true that the decrees of the colonies are transmitted to the seat of government, and registered in the Department of State, a certificate of that fact under the great seal, with a copy of the decree in the same manner, would be sufficient *prima facie* evidence of the (verity) of what was so certifed; but the certificate offered to the court is under the private seal of the person giving it, which can not be known to this

court, and of consequence can authenticate nothing. The paper therefore, purporting to be a sequestration of the *Aurora* and her cargo in Para, ought not to have been laid before the jury.

"Admitting the originals in the Portuguese language to have been authenticated properly, yet there was an error in admitting the translation to have been read on the certificate of the consul. Interpreters are always sworn, and the translation of a consul not on oath can have no greater validity than that of any other respectable man.

"If the court erred in admitting as testimony papers which ought not to have been received, the judgment is of course to be reversed and a new trial awarded. It is urged that there is enough in the record to induce a jury to find a verdict for the defendants, independent of the testimony objected to, and that, in saying what judgment the court below ought to have rendered, a direction to that effect might be given. If this was even true in point of fact, the inference is not correctly drawn."

Church v. *Hubbard*, 2 Cranch, 238.

It will readily be seen that none of the documents asked to be considered as a will and the proceedings thereunder, whether in Spanish or translations into English, are properly authenticated. Chief Justice Marshall also said:

"To introduce into a cause a copy of any paper, the truth of that copy must be established and sufficient reasons for the non-production of the original must be shown."

Smith v. *Carrington*, 4 Cranch, p. 70.

The defendants certainly have not brought themselves within this rule.

The defendants would have the court assume that these papers show proceedings selling this property; yet they offer absolutely nothing to show that they are true copies or correct translations of public proceedings had

by a Spanish tribunal at the time of the occurrences which the papers recite. They offer nothing to show when, where, or how the papers found their way into what is called the Spanish Archives. The certificate offered by Scarlet refers to no date of filing or recording. There is nothing on the papers to show that they were ever filed or recorded. There is absolutely nothing to show that a public record of the transaction such as these papers refer to, ever existed, unless that is to be assumed (which it can not be) from their coming from the custody of Scarlet. There is no proof offered that the copies are true and correct and there is no properly-authenticated certificate of any one to the genuineness of any of the papers. To all intents and purposes these are private documents, coming from private hands.

It will be noted that all these papers bearing upon the alleged administration of the estate of Gabriel de Rivas purport to be either translations or copies, with two exceptions.

1. The purported will, in Spanish, of Gabriel de Rivas, pp. 111–113.

2. The alleged proceedings, also in Spanish, of Maria Merino to sell this particular piece of property for payment of debts, and disbursement of proceeds, Exhibit 13, pp. 155–187.

These papers we suppose counsel offered as originals. It is not entirely clear that they came in the mail from Mr. Scarlet; but whether they did or not, they came from private hands. Papers transmitted from Mr. Scarlet having on them no certificate of any sort and unaccompanied by anything to show when, where, or that they were ever filed or recorded as public documents, can not be assumed to be the will of Gabriel de Rivas and the administration proceedings of Maria Moreno to sell this particular piece of property. This court, referring to an

alleged disposition of lands previous to the acquisition of territory from Mexico, said:

"Written documentary evidence, no matter how formal and complete, or how well supported by the testimony of witnesses, will not suffice if it is obtained from private hands, and there is nothing in the public records of the country to show that such evidence ever existed."

Peralta v. *United States*, 3 Wall. 440.

"Neither the grant nor the certificate of approval has been found among the Mexican Archives, nor the record of them upon any book of record. Both papers came from the hands of the claimant. The genuineness of the title depends upon the proof of the official signatures, and some evidence of possession."

United States v. *Valljo*, 22 How. 422.

That the defendants offer what they wish to have considered as the original will of Gabriel de Rivas, without evidence of its ever having been filed or recorded, or any action taken upon it, certainly to say the least casts well-grounded suspicions upon the validity of the other papers purporting to be copies and translations.

"The non-production of this record evidence of the title, under the circumstances, is calculated to excite well-grounded suspicions as to its validity, and throws upon the claimant the burden of producing the fullest proof of which the party is capable of the genuineness of the grant. We do not say that the absence of the record evidence is of itself necessarily fatal to the proof of the title; but it should be produced, or its absence accounted for to the satisfaction of the court.

"We have already said, that the genuineness of the official signatures to the paper title might be established, and yet the title forged, and stated our reasons. Proof of the genuineness of these alone can never be regarded as satisfactory. It must be carried farther by the claimant. The record proof is, generally speaking, the highest.

Possession and occupation of some duration, permanency, and value, are next entitled to weight.

"At least, satisfactory evidence should be required, under the circumstances in which most of these Mexican grants were made, as to make the antedating of any given grant irreconcilable with the proof; otherwise there can be no protection against imposition and fraud in these cases."

United States v. *Teschmaker*, 22 How. 392–406.

All these papers were admitted as evidence without first requiring any evidence of their antiquity or of their genuineness. There is no evidence offered of the execution of the will. In fact, it does not purport to be signed by Gabriel de Rivas. It is not a valid will on its face.

"The rule embraces no instrument which is not valid upon its face, and which does not contain every essential requirement of law under which it was made. Neither the deed nor the will comes within the rule, and we think the court very properly excluded them both from the jury."

Meegan v. *Boyle*, 19 How. 149.

In the same case this court said:

"By the Spanish law, a will was required to be proved by the attesting witnesses, within one month after the decease of the testator; and, when proved, it is required to be recorded. 1 White's Recop. 111; 2 Morgan & Carlton's Partidas, 975–977."

Meegan v. *Boyle*, 19 How. p. 149.

There is no evidence offered to show where or when these documents were found, or of possession under any of them by alleged grantees. There is no evidence offered to free the papers from the just ground of suspicion under which they fall; yet under the decisions of this court

there should be such proof preliminary to their admission into evidence.

Applegate v. *Lexington & Carter Co. Mining Co.* 117 U. S. 255.
Barr v. *Gratz*, 4 Wheat. 213.
Winn v. *Patterson*, 9 Pet. 663.
Stoddard v. *Chambers*, 2 How. 284.

These papers are offered unaccompanied by evidence of authenticity, genuineness, possession under the alleged sale, or that they had been in existence for more than thirty years. Lack of evidence of their age shows they do not come before the court free from a just suspicion of fraud, a suspicion augmented by evidence found in the record. In the answer to the bill of complaint in the Circuit Court of Escambia County, Florida, in proceedings being held there before Judge Maxwell, made by the Pensacola City Company and offered by plaintiffs (p. 79, Rec.), it appears that these papers were not known to exist until after 1872 — less than thirty years ago; and an examination of the testimony of Colonel A. C. Blount, a witness for the defendants (p. 304, Rec.), shows that just preceding the time they were first brought to light there was a very loose supervision of the papers styled the Spanish Record, or Archives, and that during the war they were more under the personal than official supervision of Mr. de la Rua, and he took these papers off with him from Pensacola. It further appears from Colonel Blount's testimony (p. 304, Rec.) that Mr. Brainard had access to these archives at all times.

Now Mr. Brainard was agent of the Pensacola City Company (p. 47, Rec.), and there was every opportunity, just previous to the time the existence of these documents is first heard of, for them to have found their way amongst the regularly recorded Spanish papers. Papers

properly belonging to those archives, like the grant of Gabriel de Rivas, accepted as the origin of title by both plaintiffs and defendants, had been filed and recorded when the transactions to which they refer occurred, as is shown by entries made at the time. There is every difference between the status of such a grant and of papers such as are here offered, which found their way into the Spanish Archives without any evidence of whence, when, or how they came, were never recorded or filed there, and whose very existence was not known of until after a suit against the Pensacola City Company, wherein evidence of this character would be useful. The latter papers came to light under circumstances to excite well-grounded suspicions, and to throw upon defendants the burden of proving, to the fullest extent, their authenticity and genuineness; yet defendants meet this responsibility by offering the papers, unaccompanied by evidence of their authenticity or genuineness, or of their having existed for such time as to entitle them to be considered as ancient documents.

NOTE: Attached as Appendix A is a brief upon the validity of the alleged will of Gabriel de Rivas and the proceedings for the opening thereof, prepared by Messrs. Runcie, Portuondo & Lamar, counsellors at law, Havana, Cuba.

Exhibits 15 to 20.

Exhibits 15 to 20 (pp. 233, 234, Rec.) are offered as evidence that the Commission appointed by act of Congress for ascertaining claims and titles to lands in West Florida and for other purposes, confirmed to one John Chabeaux the land in question, and farther on in the record, by exhibits which will be discussed later, it is attempted to show that John Chabeaux derived title through Gregario Caro, alleged to have purchased at an administration sale of the estate of Gabriel de Rivas.

The defects rendering these exhibits inadmissible as evidence are fully set forth in section XV of the Petition.

Exhibit 19 (p. 232, Rec.) purports to be from the American Papers of State, p. 103, No. 46, and is meant, we presume, to show the finding of the commission, and it does not very properly confirm anything to John Chabeaux. Exhibit 20 is a copy of the act of Congress confirming the report of the commission, offered to show confirmation by Congress of the title of John Chabeaux, and it expressly states (Sec. 7, pp. 233, 234, Rec.):

"Provided also, that the confirmation of all the said claims provided for by this act shall amount only to a relinquishment forever on the part of the United States, of any claim whatever of the tract of land so confirmed or granted."

Exhibits 21 and 22.

Exhibit 21 (pp. 234–236, Rec.) and Exhibit 22 (pp. 237, 238, Rec.) are said to be respectively:

1. "A certified copy of a translation of a deed from Gregario Caro, certified by Felo de la Rua, Keeper of the Public Archives of West Florida, to James Fitzsimmons, Samuel Smythe and John Chabeaux, for said tract of land."

2. "A certified copy of deed from James Fitzsimmons to John Chabeaux" for the same tract of land (pp. 234–336, Rec.).

Both have attached a certificate purporting to be under the hand and private seal of F. E. de la Rua, Keeper of the Public Archives, West Florida, and under date of May 16, 1885.

The first, that it is —

"a true copy of a deed from Book B of Deeds, p. 90 and of the proceedings before a United States Commissioner, from 1st Vol. p. 332, as the same remains of record in my office."

and the second, that it is —

"a true and correct copy of the deed between the parties therein named, as the same remains of record in my office, in Public Archives, Book B, pp. 278, 279."

The first bears date October 22, 1817; the second, November 22, 1819—both dates previous to the cession of Florida to the United States, yet both are in English. The originals are not produced, or their absence accounted for. No evidence is offered of any such deeds ever having been filed, or of the dates they were recorded. There is no evidence offered of their authenticity or genuineness. The property is described as containing 300 arpens *superfices*, situate at one mile from the town in the plaza known by the name of the Old Brick-Yard, and which is referred to as the tract of land that Gregario Caro purchased from the estate of the late Gabriel de Rivas, deceased, on the 21st instant and (see p. 234, Rec.) varies materially from the description found in the original grant to Gabriel de Rivas (see p. 32, Rec.), where the property was described as —

"situate more or less at a quarter of a mile of English terras, trial measurement, from the mouth of the rivulet of the Marsh, between the n. n. e. and n. e. by n., which rivulet is the extreme east of this population according to the plat thereof."

And this is the only description found anywhere of the land it is attempted to show that Gregario Caro purchased at the administration sale.

As to Exhibit 21, it is stated by counsel for defense (p. 234) to be only the certified copy of a translation. Exhibit 21 does not come within the rule as to the copy of a copy laid down by Mr. Justice Story (*Winn* v. *Patterson*, 9 Peters, 677). The copy of a copy is not shown to have been made in such a way as to really make it a second copy, which is what the rule requires.

What has been said relative to proving a copy and the certificate required from an officer authorized by law to make such certificate, and the proper authentication of such certificate, applied to these exhibits.

Exhibit 24.

Exhibit 24 (pp. 238–300), the first page and a quarter in English, the remainder in Spanish, of which a translation ordered by the Circuit Court of Appeals will be found pp. 399–457, has no reference whatever to any property in dispute in this case. The explanation of why it was offered is made by defendants' counsel (p. 238), as follows:

"I offer in connection with the others, the protocol, which I have in my hand, and I will give the names of the beneficiaries: one, Thomas Marshall, and the other is John Chebeaux; I offer it for the purpose of showing the authenticity of the proceedings relating to this particular tract of land, because found at the same place, signed in part by the same parties, and having the same general appearance."

There is no certificate to this paper. There is no evidence as to where it was found; and as to the statement of counsel, that it was found at the same place as the proceedings relating to the particular tract of land, there is not one particle of evidence as to when, by whom, or at what place those purported proceedings were found, save in the answer to the bill of complaint in the Circuit Court of Escambia County, Florida (p. 79, Rec.).

The remaining exhibits we will take up in accordance with the sequence of dates of the instruments, rather than by the number of the exhibit. They are all (as are the exhibits that have preceded them, commencing with No. 18) introduced to establish a chain of title to the Pensacola City Company, and there is no evidence

offered to connect any of the defendants in this suit as deriving title from the Pensacola City Company, or from any of the parties through whom the title is attempted to be traced to that company.

Exhibit 27.

Exhibit 27, offered in evidence (p. 238) and set forth (pp. 312–314, Rec.), purporting to be a certified copy of the partition between John Chebeaux, Louis de Conde Morant and Lorenz Millaudon, is a document in English, under date of October 1, 1818. It is certified to by A. E. de la Rua, Keeper of Public Archives, West Florida, May 16, 1885, as a

"true and correct copy of the deed of partition between the parties therein, as the same remains of record in my office, Public Archives, Book of Deeds B. pp. 229, 230."

It is subject to all the objections that have hitherto been cited to Exhibit 22.

Evidence of Payment of Taxes.

It was a palpable error to have permitted William Fisher and W. A. Blount, as set forth in Sec. XIX of the Petition, to testify that the Pensacola City Company and one Brainard respectively, had paid taxes on this property, the tax receipts being the best evidence of who had paid taxes, and no other evidence being admissible without the non-production of such receipts being accounted for.

Requirements to Prove Conveyances in Florida.

The exhibits now to be referred to all purport to have been made since Florida was admitted into the Union, and as each fails in some particular to meet the requirements of the statutes of Florida as to the admissibility

of such testimony, we will state those requirements at the outset.

The statutes of the State of Florida make deeds and mortgages, duly recorded, *prima facie* evidence in the courts of the State, without proof of execution; and also certified copies of the record of deeds and mortgages that have been duly recorded, shall be admitted as *prima facie* evidence thereof, and their due execution with like effect as the originals, when duly proved; provided it is made to appear that the originals are not within the custody or control of the party offering such certified copies. Sec. 21, Article 16, Statutes of Florida.

The Supreme Court of Florida, however, has said, construing this section:

"But the constitution has not made the original record itself, without any other showing, evidence of deeds or mortgages."

Johnson v. *Drew*, 34 Fla. 130.

Since 1828 it has been required to record deeds to make them good as against subsequent purchasers for valuable consideration. Sec. 1972, p. 653, Revised Statutes of Florida.

In order to entitle the conveyance to record its execution must be acknowledged by the party executing the same, or the execution thereof by the said party proved by a subscribing witness thereto, before the officer and in the form and manner provided. Sec. 1973, p. 654, Revised Statutes of Florida.

The statute putting into effect the constitutional provision heretofore quoted will be found, Section 1110, Revised Statutes of Florida, 1892.

The Supreme Court of Florida has said:

"The result is that under our statute a certified copy of a proved deed, duly recorded, may be received as evi-

dence only where the original is duly proved to have been executed or as secondary evidence. Until the legislature shall declare that the certificate of the officer taking an acknowledgment shall be deemed sufficient proof of due execution otherwise than for the purpose of record, we can not change the rule of evidence."

Skinner v. *Pinney*, 19 Fla. 48.

"A certificate transcribed from a record, of an instrument which has been spread thereon, without any such proof or acknowledgment of its execution as is necessary to admit it to record, is not admissible in evidence. The transcript of a paper upon a record under such circumstances is a nullity and of no effect."

Parker, Holmes & Co. v. *Cleveland*, 37 Fla. 39.

"The act of 1846, Ch. 81, Sec. 1, Thompson's Digest, 343, refers only to such instruments as are duly proved before the recording officer, or some judicial officer, and recorded in compliance with law."

Sanders v. *Peepon*, 4 Fla. 465.

Where a deed failed to show that the grantor ever acknowledged, or other subscribing witnesses ever proved, the execution of the original deed, the court said :

"A certfied copy of the record of the deed is not admissible in evidence as proof of the execution or contents of the original, if the record has not been made upon the evidence of execution required by statute."

Kendrick v. *Latham*, 25 Fla. 819.

Statute (McClellan's Digest, Sec. 6, p. 215) provided that conveyances shall be recorded, and in order to procure recording the execution thereof must be acknowledged by the party making the same, or proved upon oath by at least one of the subscribing witnesses before the officer authorized by law to record the same, held :

"That where a deed was recorded the day it bears date and admitted to record without being acknowledged by

the clerk, before any officer authorized to take such acknowledgment, that the record was a nullity."

Townsend, Admr. v. *Edwards*, 25 Fla. 584.

Exhibit 31.

Exhibit 31 (pp. 319–321, Rec.) purports to be a sheriff's deed made by James E. Exum to John Brosnahan and Henry Mitchalet.

The facts are fully set forth in Sec. XX of the Petition, and show that the purported sale was absolutely null and void, as the sheriff was acting upon a void process which could confer no right on him to sell, because the deed on its face recited that the judgment was obtained against John Chabeaux, deceased. There is no attempt to show any possession under this deed. This court in a case that came from Florida, said:

"The solution of one question presented by the record is decisive of this case. Does the writ of *fieri facies* tested after the death of the party against whom the judgment is rendered, confer power on the ministerial officer to execute it? * * * It is a well-settled principle of law which has often received the sanction of this court, that the decree or judgment of the court having jurisdiction, is binding until reversed, and can not be collaterally attacked. But the defect in this case occurs in the judgment, and is fatal to Mitchell's title for the purchasers on a judicial sale are not protected, if the execution on which the sale was made was void. A void process confers no right on the officer to sell, and all acts done under it are absolutely null.

"The writ of *fieri facies* on which Mitchell rests his title was tested after the death of St. Maxent, and, according to a familiar rule of the land law, it was therefore void. The death of a defendant, before the test of an execution, compels the plaintiff to sue out a writ of *fieri facies*, for the alteration of the person 'alterates the process.' *Bac. Abr. Tit. Fieri Facies.*"

Mitchell v. *St. Maxent*, 4 Wall. 237.

Before a sheriffs' deed is admissible in evidence for the purpose of proving title thereunder, a valid judgment and execution must be shown.

McGeehe v. *Wilkins*, 31 Fla. 83.
Davis v. *Sheles*, 14 Fla. 43.
Donald v. *McHinnon*, 17 Fla. 746.
Kendrick v. *Latham*, 25 Fla. 918.

Exhibit 28.

Exhibit 28, pp. 314–316, purports to be a conveyance by Juan Brosnham and wife and Henry Mitchelet and wife, of this same property acquired by the null and void sheriff's deed to Walter Gregory; the consideration received being $1,200 dated November 6, 1834, it passes no title, the deed under which the grantor held, made in January of the same year, having been null and void.

Exhibit 30 (pp. 318, 319, Rec.) also purports to be a sheriff's deed conveying to Walter Gregory three undivided one-eighteenth interest in 300 arpens called the Rivas land, consideration $3,376, date February, 1835. The deed purports to have been made to satisfy a decree in chancery against the unknown heirs of Louis Donquemenil de Morant. Such being the case it could not avail to pass title, even had a confirmation of the sale been shown, and none was shown.

"But it is apprehended the record of the proceedings against the unknown heirs, etc., is no evidence that any such heirs existed, and that the decree and deed, made in pursuance of it, can not avail to pass any title to the complainant, without some evidence that John Aben Hamlin left heirs upon whom his estate descended, and from whom it could pass by the commissioner's deed to the plaintiff."

Hollingsworth v. *Barbour*, 4 Pet. 477.

"The confirmation of the sale by the order of the court did not cure the invalidity of the execution upon which

it was made. The extension of the judgment against Young, so as to embrace the sureties, being a void proceeding, no subsequent action upon the sale could give it validity. A confirmation of a sale may cure mere irregularities not affecting its fairness, but not an infirmity growing out of the nullity of the judgment under which it was had."

Lamaster v. *Keeler*, 123 U. S. 391.

Exhibit 29.

Exhibit 29 (pp. 316, 317, Rec.) purports to be a conveyance by Lorente Millaudon and wife to Willam H. Chase of a four undivided one-eighteenth interest in a piece of land lying, situate and being on the Bay of Pensacola, and within the corporate limits of Pensacola, known as the Rivas tract, the consideration cited being $31,800.00, and the date of the deed the 23d of January, 1837. The grantors to this deed are citizens of New Orleans. There is no evidence that they ever acquired title from any source whatever, and it is incredible that William H. Chase ever paid to strangers, citizens of New Orleans, $31,800 for such an indefinite purchase. This court has said in the case of *Maxwell Land Grant Co.* v. *Dawson*, 151 U. S. 600:

"It is incredible that any man should have paid $3,700 for such an indefinite purchase of real estate."

Such purchases certainly did not vest in Gregory and Chase a valid title they could pass to the Pensacola City Company Association by the articles of agreement set out under Exhibit 21 (pp. 321–336, Rec.), and which that association could transfer to the Pensacola City Company, under the indenture by which that corporation acquired the property of the Pensacola City Company Association (Exhibit 32, pp. 336–340, Rec.).

Exhibits 31 and 32.

Exhibit 31 (pp. 321–336, Rec.), of January 13, 1837, and Exhibit 32 (pp. 336–340, Rec.), purporting to be a deed of May 8, 1870—some 43 years afterwards—whereby the Pensacola City Company, a corporation, acquires all the property of the Pensacola City Co., a joint stock association, are both unaccompanied by any evidence of their authenticity or genuineness or of their ever having been recorded; and they contain no description of the Rivas tract of land, or mention of that tract, beyond what appears in Exhibit 31, on page 323, Rec., which recites:

"And whereas since the execution of the said articles of agreement, it has been discovered that Samuel Millaudon, of New Orleans, owned four eighteenth undivided parts, more or less, of one of the tracts of land conveyed by the said Walter Gregory to the said William H. Chase, in trust for the Pensacola Land Co., aforesaid, known as the 'Rivas tract,' and whereas the said W. H. Chase, as trustee of the said Pensacola Land Co. has purchased the interest of the said Millaudon for the sum of thirty-one thousand and eight hundred dollars, and has drawn his bill of exchange on the original shareholders, in the said Land Co. in proportion to their respective interests, payable on the 1st day of April next."

There is no evidence of title from Samuel Millaudon, or evidence that Samuel Millaudon ever claimed any title to the Rivas land.

The defendants introduced a map made by George E. Chase, for the Pensacola Land Co., 1835–1836, and they claim this particular land was laid off in streets, lots and blocks, and the schedule, beginning on p. 330 of the record, shows the nature of their claim and the lots and blocks according to this map.

If the language of this agreement is to be taken as true it shows that this map was made before they had pretended to acquire title to the land the map covers.

There is no evidence in the record that this Pensacola City Co., an association, organized January 13, 1837, ever exercised or claimed ownership (even if had its map, made in 1835–1836) covering the Rivas property, if the testimony of William Fisher and W. A. Blount, relative to the payment of taxes, already alluded to, was admissible.

"The payment of taxes, surveying and mapping the lands and executing a mortgage covering them, do not constitute prior possession."

Seymour & Simpson, appellants, v. *Cresswell et al.* 18 Fla. 29.

If the company ever asserted title to the Rivas tract it seems to have been prompted to have abandoned its claim to the land (which was covered by the map of George E. Chase for the Pensacola City Co. Association) for the term of 43 years, the company going out of existence without asserting any right or title.

Dr. G. O. Brosnham (pp. 67, 68, Rec.) states that he was agent for the Pensacola Land Association from the year 1871 up to six or eight years ago, and his language is:

"I never heard of the Pensacola Land Association claiming the Rivas tract, not to my knowledge."

Another strong corroborative fact of the abandonment of this claim is, that though the property was mapped in lots and blocks in 1835–1836, the conveyance from the Pensacola City Co., an association, to the Pensacola City Co., a corporation, in 1870, described its boundaries in section and township, according to U. S. Survey, making no mention of lots and blocks and grants; and the Pensacola City Co., a corporation, employed Lee & Harding to make a map for them in 1873. Mr. Brainard, who had been agent of the Pensacola City Co., says nothing

in his evidence (pp. 47, 48, Rec.) about claim of ownership or of possession of this property by the Pensacola City Company.

Request for Charges.

As to the plaintiffs' request for charges (pp. 375–379, Rec.), these requests all announce correct principles of law applicable to the facts that were before the jury, and the refusal to give them was an error.

Judge's Instructions.

If the contention we have been making is correct, and the numerous papers already referred to admitted in evidence against petitioners' objection were inadmissible, then the instruction, that had as a basis these documents, was an error, and the relief here asked should be granted. But independently of the admissibility of the evidence objected to by petitioners, we further contend that had such evidence been admissible it presented questions of fact, and that evidence offered and not objected to also presented questions of fact peculiarly within the province of the jury to pass upon, and that the court invaded that province when it instructed the jury to decide for the defendants and had the clerk write out the verdict and deliver it to the foreman of the jury.

Each of the following decisions applies with force to this particular case and shows with what jealous care this court has always protected the right of trial by jury :

"The first prayer of the defendants, in the Circuit Court, being to instruct the jury that, upon the whole evidence, the plaintiff ought not to recover; if it might properly have been granted in any case, in which any testimony was offered, certainly ought not to have been granted if any possible construction of that testimony would support the action."

The Bank of Washington v. *Triplett & Neale*, 1 Pet. 31.

"It is insisted, with much ingenuity, that in this case there was no disputed fact for the jury to pass upon, and that the only issue in the case being one of law, it was proper for the court to dispose of it. If this were so, the instruction of the court might be sustained, provided the undisputed facts necessary to sustain the verdict had been submitted to the jury. * * * The judge also tells us that 'there is very little discrepancy in the testimony.' But where there is any discrepancy, however slight, the court must submit the matter to which it relates to the jury, because it is their province to weigh and balance the testimony and not the courts."

Barney v. *Schneider*, 76 U. S. 254.

"While it is correct practice for the judge to instruct the jury in an absolute form on admitted facts, he is not authorized to take from the jury the right of weighing evidence where the facts are controverted."

Mutual Life Ins. Co. v. *Snyder*, 93 U. S. 396.

"But independent of this ground, which would be conclusive, there is another which seems equally so; and that is, that it called upon the court to decide upon the nature and effect of the whole evidence introduced in support of the plaintiff's case, part of which was necessarily of a presumptive nature, and capable of being urged with more or less effect to the jury."

The court, through Mr. Justice Story, after discussing the evidence, says:

"Under such circumstances, if no other objection existed to the title, the lapse of time would alone be sufficient to justify a presumption of its due execution and loss, and nonproduction by the plaintiff, proper to be left to the jury; and thus justify the court in refusing a nonsuit."

Orane v. *The Lessee of Morris et al.* 6 Peters, 610.

By Mr. Justice Harlan:

"Where a cause fairly depends upon the effect or weight of testimony, it is one for the consideration and

determination of the jury, under proper directions as to the principles of law involved. It should never be withdrawn from them, unless the testimony be of such a conclusive character as to compel the court, in the exercise of a sound judicial discretion, to set aside a verdict returned in opposition to it."

Phœnix Mut. Life Ins. Co. v. *Doster*, 106 U. S. 30–38.

"Such direction can be properly given only when the state of the evidence is such as to leave no room for doubt that it is the duty of the jury to find accordingly. This case was certainly not within that category."

98 U. S. 582.

The court in taking the case away from the jury quotes with approval the motion of defendants below, respondents here, made for that purpose, and shows that it was not proceeding upon the idea that there were no facts before the jury, but—

"that the facts are of such character and such consequence as would not give the privilege of finding a verdict for the plaintiff" (p. 380, Rec.).

As to the character and consequence of the facts, we are constrained to differ with the court. The court states its reason for taking the case from the jury to be:

"The court does not at this moment recall any testimony of such force and character that should go to the jury and permit them to determine that Mr. Fisher had not been in adverse possession of this property, under the decree of Judge McLellan" (p. 381, Rec.).

The reason given shows that the court labored under a miapprehension both of the law and the facts. If Fisher ever took possession as receiver, which is not clearly shown, he was acting for the benefit of all parties concerned, to protect and preserve the property, and would not hold adversely to petitioners here, who were parties to the suit in which he was appointed.

The suit in which he was appointed as receiver is still pending in the Snpreme Court of Florida, there being a motion there, yet undisposed of, to set aside the decree of Judge McLellan. The statute of limitations has therefore never begun to run and is not involved. There is in evidence (pp. 90–93, Rec.) the order of Judge McLellan, appointing Fisher as receiver; but whether Fisher took possession under that order is a collateral fact *in pais*, an extrinsic circumstance, and the inference to be drawn therefrom, even if Fisher's possession as receiver could be adverse to petitioners, should have been left to the jury.

"Although it is the true province of the court to construe written instruments, yet, where the effect of such instruments depends, not merely on the construction and meaning of the instrument, but upon collateral facts *in pais*, and extrinsic circumstances, the inferences of fact to be drawn from them are to be left to the jury."

Syllabus to *Etting* v. *The Bank of the United States*, 11 Wheat. 60.

The testimony relative to possession by Fisher of the property in question under this appointment, to say the least of it, is most vague and indefinite. He says (p. 89, Rec.) that he has been receiver since April, 1887, and yet that he does not know when he went into possession. That he has never seen any of the books or papers of the Pensacola City Company and does not think that they owned any of it (presumably referring to this land) at the time that he was appointed receiver. Furthermore, he is one of the repondents here and he does not set up his possession under the receivership. As will be seen by the references to the record under Sec. IX of the Petition, William Fisher traces title by deeds of recent date from strangers to the title, and without any evidence at all of possession under those deeds.

Whether possession is or is not adverse in any particular case is a question of fact for the jury.

Hogan v. *Kurtz*, 94 U. S. 773.

Bradstreet v. *Huntington*, 5 Peters, 402.

Whether possession is continuing is also a question to be decided by the jury under proper instructions from the court.

Cook v. *Burnly*, 11 Wall. 659.

Furthermore, all respondents who make any defense offered, like Fisher, deeds of recent date and offered no evidence of possession under those deeds. None of respondents claim through Fisher as receiver for the Pensacola City Company under the order of Judge McLellan in 1889, and could not set up the possession of said company or of Fisher as receiver, as they do not trace title to the company; and any title in the company would be an outstanding title, which as has already been fully discussed, respondents could not in this case set up.

There were some respondents pleading not guilty, viz: John Williams and John W. Bullard, who offered no evidence whatever of title from any one and no evidence of ever having been in possession. Is it possible that the court could have been right when it instructed the jury that it must find for these defendants?

The Circuit Court of Appeals confirmed the judgment of the court below mainly upon the admissibility and effect of the last will and testament of Gabriel de Rivas and the protocols accompanying the same, and therefore we will first allude to the questions of fact in the province of the jury arising out of the alleged will and the protocols accompanying it.

One of the objections to the admission of the purported will of Gabriel de Rivas, and the protocols, was that they were fraudulent, spurious, and forged (p. 300, Rec.).

"Few questions in the law have given rise to a greater conflict of authority than the one under consideration. But for many years past the tendency has been, in England and in the United States, to consider the question of fraud as a fact for the jury under the instruction of the court. And the weight of authority seems to be now, in this country, favorable to this position."

Warner v. *Norton*, 61 U. S. 460.

"But when matters alleged to be fraudulent are investigated in a court of law, it is the province of a jury to find the facts, and determine their character, under the instruction of the court."

Gregg v. *The Lessee of Sayre et ux.* 8 Pet. 252.

"It was forty years old. No proof of its execution was necessary; its antiquity proved it. But, it is said, the proof and attestation before the court in Virginia, to give it validity, was wanting, and that it appeared to be so upon the face of the paper given in evidence. That might, or might not be so. But it was a fact in controversy between the parties, as much so as any other fact in the case, and the court could not be asked to instruct the jury upon their belief of another single fact, namely, the residence of Simon Summers in the County of Alexandria, that the party was not entitled to freedom under the statute of Virginia. The instruction as asked excludes all the other evidence, and puts the legal issue proposed on it upon a single fact. It excludes, also, all presumptions which the jury might make from the other evidence in connection with antiquity of the paper which was before them. The court did not err in refusing to give the first instruction."

Adams et al. v. *Roberts*, 2 How. 496.

From the above authorities it should have been left to the jury to determine whether these documents were fraudulent. Also there should not have been excluded any presumptions the jury might make from the other evidence in connection with the antiquity of the papers before them.

Genuineness of Documentary Evidence Offered.

The answer of the Pensacola City Company (p. 79, Rec.) shows that it is not even pretended that these papers were known to have existed until after 1872, but that soon after a suit brought in that year was instituted, and on a thorough search of the Spanish Archives the proceedings were found. As to the age of the documents there is no evidence. It further appears from the testimony of Colonel A. C. Blount, for respondents (p. 304, Rec.) that Mr. La Rua had possession of these papers during the war, and the witness thinks that LaRua took them away with him, away from Pensacola. To be ancient documents the papers should have been shown to have been at all times in proper custody at a proper place.

It also appears from Colonel Blount's testimony (p. 304, Rec.) that Mr. Brainard, who was agent for the Pensacola City Company (p. 47, Rec.) had access to these Archives at all times. The documents have none of the proper file marks, dates of record, and other evidences of authenticity, and there was every opportunity for them to have found their way among the Spanish Archives only just about the time they were first discovered, less than thirty years before the bringing of this suit.

All this was evidence the jury should not have been deprived the privilege of considering in determining the very important fact involved, of whether the papers were forgeries.

The Will of Gabriel de Rivas.

Besides the evidence already cited applicable to all this documentary evidence, there were other facts properly within the consideration of the jury relative to whether the so-called will of Gabriel de Rivas was a forgery. It concludes as follows:

"and signed as my friend, Don Jose Maria de la Penas, friend of Gabriel de Rivas, as he could not write. Signed, Jose Maria de la Penas."

The contention of respondents was that Gabriel de Rivas being unable to write, that Jose Maria de la Penas signed his (de la Penas's) name to the will for Gabriel de Rivas. Still, the document does not state that Jose Maria de la Penas signed at the request of Gabriel de Rivas, and respondents themselves offered evidence showing that Gabriel de Rivas could write. The purported marriage contract with Maria Moreno purports to be signed by Gabriel de Rivas, in the presence of witnesses (p. 188, Rec.); and there is also offered a promissory note purporting to be signed by Gabriel de Rivas (p. 191, Rec.).

Again (pp. 127, 128, Rec.), there purports to be an affidavit by Manuel de Laro and six others, February 27, 1807, to the effect that they had been called by Gabriel de Rivas and informed that this was his last will and testament, and that he seemed to them to be in the possession of his full senses. If this be true, it is further evidence bearing upon why he should not himself have signed the will.

Then there is what purports to be a petition of Eugenio Anto. Sierra (p. 147, Rec.) to the effect that the property of Gabriel de Rivas, owing to his prolonged sickness, had at the time of his death been exhausted, with the exception of two houses. If Gabriel de Rivas was a man of sufficient importance in the community to have accumulated property in excess of two houses, that was a fact, taken in connection with the other evidence, bearing upon whether he was a man who could himself have signed his will.

In Exhibit 13, offered by respondents, viz: the purported proceedings, in Spanish, of Maria Moreno to sell the particular piece of property in question, there is

what purports to be a promissory note, under date of October 4, 1812, given by Gabriel de Rivas, and not knowing how to sign, signed for him by Maria Moreno. Here is further evidence which it was for the jury to consider bearing upon whether he was able to write, and also bearing upon whether the will was genuine. In another aspect, a note signed by Gabriel de Rivas in 1812 would be evidence that he was living then, *i. e.*, some four years after the purported date upon which the will was probated, the purported probate proceedings citing his death.

The Purported Sale of the Property upon the Petition of Eugenio Anto. Sierra, Testamentary Executor.

Here is another question appearing upon the face of the document offered that should have been submitted to the jury. It is attempted to show that the property was sold upon a petition of Eugenio Anto. Sierra as testamentary executor for the estate of Gabriel de Rivas. Was he the testamentary executor? In the so-called will of Gabriel de Rivas he was appointed guardian of the minor children—an office under the Spanish law distinct from that of executor; and there is no evidence offered of his having ever been appointed as executor.

Was the Land Referred to in the Chain of Title Whereby Respondents Attempt to Show an Outstanding Title in the Pensacola City Company the Same Land as is Referred to by the Grant of Gabriel de Rivas?

Here was another question of fact that could be determined only by the jury.

Whether the place of location agrees with the description in the grant, is a question for the jury.

Pinkerton v. *Ledoux*, 129 U. S. 346.

Where the boundaries of land described in any deed really are, is always a question of fact.

Anders et. al v. *Watkins*, 26 Fla. 401.

"It is the duty of the court to construe written instruments; but the application of their provisions to external objects described therein is a peculiar province of the jury. Whether this document describes Summer Street as it was afterwards laid out from high-water mark; whether 'the lower corner of Gill's wharf next to the sea' was at that time (in 1683) at low-water mark; whether this street was staked out to low water, were questions which should have been submitted to the jury."

Richardson v. *The City of Boston*, 60 U. S., 271.

The grant to Gabriel de Rivas is designated as

"300 arpens of land, giving metes and bounds, situated at more than a quarter of a mile of English terrestrial measurement from the mouth of the rivulet of the Marsh between the north, northeast, northeast by north; which rivulet is the extreme east of this population according to the plan thereof" (pp. 27, 30, and 31, Rec.).

The descriptions in the other documents offered to trace title to the Pensacola City Company, variances in which in some instances has already been alluded to in discussing the admissibility of those documents, will be found as follows:

First. Sale to Gregario Caro, October 20, 1817 (p. 209, Rec.).

Second. Gregario Caro to James Fitzsimmons *et al.*, October 22, 1817 (p. 234, Rec.).

Third. James Fitzsimmons to Cerile de Morant, attorney, etc., November 22, 1819 (p. 237, Rec.).

Fourth. Partition between John Chabeaux and Lawrence Millaudon, October 1, 1818 (p. 314, Rec.).

Fifth. James W. Exum, sheriff, to Brosnahan and Mitchelet, January 6, 1834 (p. 319, Rec.).

Sixth. John Brosnahan and Mitchelet to Walter Gregory, November 6, 1834 (p. 314, Rec.).

Seventh. James W. Exum, sheriff, to Walter Gregory, February 9, 1835 (p. 318, Rec.).

Eighth. Millaudon to W. H. Chase, January 23, 1837 (p. 316, Rec.).

Ninth. Articles of merger into Pensacola City Company Association, January 13, 1837 (p. 323, Rec.).

Tenth. In the purported deed of May 13, 1870, from the Pensacola City Company, a joint stock association, to the Pensacola City Company, a corporation, the description is according to the United States survey, in sections and townships, as follows:

"Also that tract of land lying and being in the city of Pensacola, in sections 8 and 21 of said township and ranges according to the said survey, and known as the Chabeaux tract, containing in section 8, 226 acres, and in section 21, 9.71 acres."

There are no conveyances offered from the Pensacola City Company to any of the respondents here, or to their grantors, and the identity of the description changes in the deeds that they offer, from sections and townships to lots and blocks, according to the plan of Thomas C. Watson, one of the respondents.

The description of the land in the pretended title of Gregario Caro is simply a statement of 300 arpens, the location of which is nowhere shown; and in the purported sale from Gregario Caro to Fitzsimmons, Smythe and Chabeaux, the description is of a tract of land one mile from the city of Pensacola, known as the Brick Yard. It is certainly a question of fact which a jury should pass upon whether this alleged purchase by Gregario Caro and John Chabeaux was of, and the property described in the other documents is, the tract of land claimed by petitioners in this suit and covered by the grant to Gabriel de Rivas.

Possession a Question for the Jury.

At the opening of this brief is cited the evidence showing possession (by your petitioners), of the property sued for and it is pointed out that respondents have offered no evidence of possession either by and through Fisher's appointment as receiver, or under the deeds to them of recent date from strangers to the outstanding title attempted to be set up in the Pensacola City Company. The respondent Fisher himself is no exception. He offers no evidence of possession but rests solely on deeds of recent date from strangers to the title.

There is also strong evidence, pp. 84–86, Rec., already alluded to, of admission of title by the respondents, William Fisher and W. A. Blount. The witness Fisher as late as 1892 buys part of the lands from Caro; has deeds made out by and the title passed upon by Mr. W. A. Blount as his attorney, and William Fisher recognizes his title, buying the lots from him.

There is little semblance of controverted facts upon the subject of possession in this case. But if a court is not justified in instructing a jury which way to decide a case, where there are controverted facts, it is also not justified in instructing a jury to decide a case contrary to all the evidence. The evidence of possession by the Rivas heirs is so strong that if the case should have been taken from the jury at all the instructions should have been to find for your petitioners.

As to controverted facts, on p. 55, Rec., it will be seen that the court admitted the abstract of title purporting to be signed by Jos. E. Caro in 1835, as Keeper of the Public Archives of West Florida, for the purpose, as stated by the court, of controverting the memory and statement of the witness A. V. Caro, that his father had claimed these lands for his mother. We have already contended that this abstract was not admissible for any

purpose, but if it was allowed to go to the jury to controvert the testimony of A. V. Caro that his father had claimed this property for his mother, after that the court should not have taken from the jury the right of deciding whether Jos. E. Caro (who, it will be recalled, p. 33, Rec., had married Paula Rivas, a daughter of Gabriel de Rivas), by setting his hand and seal as a public officer to an abstract of papers recorded in his office, thereby recognized as valid the title of which the paper he signed purported to be an abstract.

Was this abstract introduced really to contradict the testimony of A. V. Caro or to try and establish the genuineness and authenticity of documents, of the genuineness and authenticity of which respondents had no evidence?

Respondents contend that a map was made of the property by the Pensacola City Company Association in 1835, showing the property in lots, blocks and streets; yet if this was done there is evidence that the lots and blocks never existed except on paper, and that the property itself was a wilderness as late as after the civil war. The witness Manuel Gonzales remembers when the property was taken possession of by A. V. Caro after the war, and states:

"To my knowledge there were only a few negro houses and no evidence of streets or public improvements, nothing but a regular wilderness" (p. 68, Rec.).

The evidence of possession withdrawn from the consideration of the jury also had a most decided bearing in the following respect. It was indeed strange that while respondents offered documentary evidence to show an outstanding title in the Pensacola City Company, they offered no evidence whatsoever of possession by any of the parties named in the documentary evidence, and that

there was undisputed testimony of possession by the Rivas heirs for some eighty odd years without molestation or interruption. It was for the jury to consider this in passing upon whether the documentary evidence was forged or genuine.

Possession is also a question for the jury in a still more important aspect of this case. There was evidence of possession by the Rivas heirs for more than eighty years, a period longer than was required by common law or is now required by the statutes of Florida to give a good title as against the pretensions of those relying upon documentary evidence unsupported by evidence of possession. A bare title is an inchoate title and incomplete without possession (72 Fed. Rep. 305). It was for the jury to have found whether the Rivas heirs were in possession for the period that there was testimony to the effect that they were in possession. Any rights petitioners might have acquired, or that respondents might have lost, depended upon the claim of ownership coupled with the evidence of possession. If the record shows possession in petitioners during the time they claim, then they and those through whom they claim have been in possession of the tract of land ever since it was granted by the Spanish Crown to their ancestor, Gabriel de Rivas, in 1806. In the case of *Smythe* v. *Canal & Banking Co.* (93 Fed. Rep. 929), decided by the judge who presided in this case in the United States Circuit Court for the Northern District of Florida, the court says:

"In any view of the case, we fail to see how the plaintiff can recover. If we should go beyond the foreign grants, shown to have appropriated as private property the same land conveyed by the State to the plaintiff, even before the existence of the United States as a nation, we would be constrained to sustain the title of the defendants under the laws of prescription they have all pleaded, and in

support of which have administered satisfactory proof of long possession and enjoyment under acts translative of property."

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October 8, 1903.

APPENDIX "A."

BRIEF UPON THE ALLEGED WILL OF GABRIEL DE RIVAS, — TOGETHER WITH PROCEEDINGS FOR THE OPENING THEREOF. PREPARED BY MESSRS. RUNCIE, PORTUONDO & LAMAR, HAVANA, CUBA.

This alleged will was made in Pensacola, February 27, 1807 (p. 129, Rec.), in the Spanish Province of West Florida, of which province Col. Vincente Folch y Juan of the Spanish Army was Civil and Military Governor for the King of Spain (pp. 127, 130, Rec.). The validity of the alleged will is properly to be determined by the Spanish law applicable to wills and in force in said province on February 27, 1807.

The Spanish law in force in the province of West Florida in 1807 was contained in the Compilation of the Laws of the Indies. In cases not provided for thereby it was contained in the laws of the kingdom of Castile, conformably with the laws of Toro.

Compilation of the Laws of the Indies, Law 2, title 1, book 2.

Antequera, History of Spanish Legislation, ch. xxvi.

White's New Recopilacion, Vol. 2, p. 25.

The Compilation of the Laws of the Indies provides as follows (l. 2, t. 1, b. 2):

"For the observance of the Laws of Castile, in cases which are not provided by those of the Indies.—We decree and command that in all cases, transactions and suits, wherein that which should be provided by the laws of this compilation is not decided or declared, nor by the regulations, provisions or ordinances enacted and unrepealed, concerning the Indies, and by those which may be promulgated by our orders, the laws of our Kingdom of Castile shall be observed, conformably with the

laws of Toro, with respect as well to the substance, determination and decision of cases, transactions and suits, as to the form and order of proceedings."

The Compilation of the Laws of the Indies was formed by a commission created in 1660, and was put in force by Don Carlos II in 1680. It contains nine books, and is subdivided into titles and laws. It was the Spanish codification for the provinces of Spain beyond sea. It was dictated for all the inhabitants of the foreign provinces. In civil matters the Spanish legislation was transferred to those remote climes without any great alterations. In political and governmental matters the effort was made to assimilate the system established in the Indies to that existing in Spain.

Antequera, History of Spanish Legislation, ch. xxvi.

This learned jurisconsult continues (p. 566):

"The Compilation of the Laws of the Indies contains, therefore, as is seen, everything that was at that time considered useful for the government and administration of the foreign provinces, and certainly this is not the first time that it has been desired to assimilate the Indian legislation to that of the Peninsula. More than two centuries ago one of our greatest monarchs so desired. 'Inasmuch as the Kingdoms of Castile and those of the Indies belong to one Crown,' said Don Felipe II in the 14th Ordinance of the Council (Compilation of the Laws of the Indies, law 13, title 2, book 2), 'the laws and order of government of both should be most similar, and should conform as much as possible, the members of our Council, in the laws and establishments ordained for those States, shall try to reduce the form and manner of the government thereof to the style and order with which the kingdoms of Castile and Leon are ruled and governed, as far as may be proper, and the diversity and difference of the lands and nations permit.'"

He adds (p. 566):

"In another article of the same ordinance (Compilation of the Laws of the Indies, l. 2, t. 1, b. 2), he says: 'In all cases, matters and suits, wherein that which should be provided by the laws of this compilation is not decided or declared, the laws of the Kingdom of Castile shall be observed, conformably with the Laws of Toro, with respect as well to the substance, determination and decision of the cases, matters and suits, as to the form and order of proceedings.'"

According to the Spanish law a will was and is of two kinds: nuncupative or *open* and written or *closed*. The nuncupative or open will was and is made orally, *de viva voz*. The written or *closed* will is that which is made in writing, closed, marked on the cover by the notary, and signed by him, by the testator, and seven witnesses present, the notary and the witnesses or at least the latter being ordinarily ignorant of its contents.

Las Siete Partidas, law 1, title 1, partida 6.
Laws of Toro, law 3.
Nueva Recopilacion, l. 2, t. 4, b. 5.
Novisima Recopilacion, l. 2, t. 18, b. 10.
Dictionary of Spanish Legislation and Jurisprudence, *ad loc.*, Escriche, 9th ed., p. 1568.
White's New Recopilacion, vol. 1, p. 98.

The alleged will under discussion was not oral or open. It was in writing and closed. It was intended to be a closed will (Record, pp. 127–130). We have carefully examined the Compilation of the Laws of the Indies, and have failed to find any provision whatsoever in any way changing, modifying or affecting either open or closed wills. This alleged will presents a case, matter or suit which is not decided or provided for by the laws of the Compilation of the Indies, nor by the regulations, provisions or ordinances enacted and unrepealed con-

cerning the Indies. Hence, the law of the kingdom of Castile, conformably with the laws of Toro, furnish the provisions applicable to the question of the validity of this alleged will. It becomes necessary, therefore, to ascertain what the provisions of the Toro laws applicable to closed wills are.

The Eighty-three Laws of Toro, compiled under the auspices of Ferdinand and Isabel, were promulgated March 7, 1505. As to closed wills they provide as follows (law 3):

"En el testamento cerrado, que en latin se dice *in scriptis*, mandamos que intervengan a lo menos siete testigos con un escribano, los cuales haya de firmar encima de la escriptura del dicho testamento ellos y el testador, si supieren o pudieren firmar, e si no supieren, y el testador no pudiere firmar, que los unos firmen por los otros; de manera que sean ocho firmas, e mas el signo del escribano; los cuales dichos testamentos si no tuvieren la dicha solemnidad de testigos, mandamos que no fagan fe ni prueba en juicio ni fuera del."

In English:

"In the closed testament, which in Latin is called *in scriptis*, we order that there intervene at the least seven witnesses with a notary, who shall sign on the cover of the draft of said testament, they and the testator, if they know how or can sign, and if they do not know how, and the testator can not sign, that some sign for the others; in order that there may be eight signatures, and also the mark of the notary; which said testaments, if they shall not have the said solemnity of witnesses, we order that they have not faith nor proof either in court or thereout."

More than 150 years before the Laws of Toro were promulgated, the *Siete Partidas*, the celebrated collection of laws compiled in the time of King Alonso the Wise, and promulgated in 1348, provided, regarding closed wills, as follows (l. 24, t. 1, p. 6):

"Breaking any of the seals of the letter in which he has made his testament, cutting any of the strings, or scratching the marks made by the notary public or breaking them, invalidates the testament, unless it is proved that this occurred by accident, and that it was not done wilfully.

"The Third Law of Toro above set forth presents no new or novel doctrine in the history of Spanish law. The principle of it was embodied in the earliest of the Spanish codes, to wit, the Seven Parts. The Third Law of Toro was itself preserved without change, and re-enacted word for word, in 1537, in the succeeding code, called the *Nueva Recopilacion*, as law 2, title 4, book 5; and again promulgated word for word without change in 1805 (only two years before the making of the said alleged will under discussion), in the *Novissima Recopilacion*, as law 2, title 18, book 10. It is the law of Spain and its former colonies to-day. The Civil Code in force in Spain, Cuba, Puerto Rico and the Philippines provides (Arts. 707, 715):

"In the execution of closed wills the following formalities shall be observed:

"1. The paper on which the will is drafted shall be placed in a closed and sealed envelope in such a manner that the former can not be extracted without breaking the seal.

"2. The testator shall appear with the will closed and sealed, or shall close and seal it at the time in the presence of the notary, who is to authenticate it, and of five competent witnesses, of whom three at least must be able to sign.

"3. The testator shall declare, in the presence of the notary and of the witnesses, that the envelope he presents contains his will, stating if it is written, signed, and rubricated by him at the foot, or if written by another, and signed by him at the end and on all of its leaves, or if, because he does not know how or can not sign, another person has done it for him, at his request.

"4. On the wrapper of the will the notary shall draft the proper memorandum of its execution, specifying the number and marks of the seals with which it is closed,

and certifying that the said formalities have been observed, to his acquaintance with the testator, or to the identification of his person, in the manner prescribed in articles 685 and 686, and to the testator having, in his judgment, the necessary legal capacity to execute a will.

"5. After the memorandum has been drafted and read, it shall be signed by the testator and by the witnesses who know how to sign, and the notary shall authenticate it with his mark and signature.

"If the testator does not know how or can not sign, one of the attesting witnesses or any other person designated by the former shall do so in his name.

"6. This circumstance shall also be stated in the memorandum, as well as the place, hour, day, month and year of the execution.

"A closed will, in the execution of which the formalities prescribed in this section have not been observed, shall be void."

The Civil Code Napoleon (Arts. 976, 1001) contains the same provisions regarding the presence and joining of the notary, under penalty of nullity.

It will be observed that the testament under consideration was intended to be a closed will (Record, pp. 127–130). In the making of the said alleged will there should have intervened at least seven witnesses. Only four intervened, namely, Jose Maria de la Pena, Mattias Cevera, Bernado Molino, and Jose Garcia Capetillo (Record, p. 129). There should have been also the intervention of a notary, who should have signed on the top of the draft of said testament. There is no evidence of any notary whatsoever having had the slightest intervention in the making or execution of the said alleged will. There should have been eight signatures to the will, and also the mark of the notary. There were but four signatures, and no mark of any notary (Record, p. 129). The said alleged will does not have the required solemnity of witnesses. It should not have faith or credit either in court or out. It is null and void.

But there was another Code of Laws of the Kingdom of Castile prior to the Laws of Toro, namely, the Seven Parts. The Eighty-three Laws of Toro do not form a complete code, as do the Seven Parts. The object of the Laws of Toro was to amend and explain and clear up any doubts arising out of the application of the laws of the Seven Parts (Escriche, Dictionary of Spanish Legislation and Jurisprudence, p. 1221). The laws of the Seven Parts were promulgated in 1348. The laws of Toro were published in 1505. The Laws of Toro control, so far as they undertake to provide concerning a given matter, and, when they do not so provide, then recourse must be had to the laws of the Seven Parts (Novisima Recopilacion, law 3, title 2, book 3). It therefore becomes necessary to examine the laws of the Seven Parts, with respect to closed wills, and construe them in connection with the Laws of Toro concerning the same matter, bearing in mind always that the Laws of Toro govern should a case present itself where the Laws of Toro are inconsistent with the Laws of the Seven Parts.

Las Siete Partidas provide regarding closed wills as follows (law 1, title 1, partida 6):

" Y la otra (clase de testamento) es aquella a que dicen en latin testamentum in scriptis, que quiere tanto decir como manda que se hace por escrito e non de otra guisa. Este testamento debe hacerse ante siete testigos llamados y rogados por el que lo hace; no pueden serlo el siervo, la mujer, el menor de 14 anos y el hombre de mala fama; deben escribir al fin su nombre diciendo: yo fulano soy testigo del testamento de citano que hizo estando yo delante; no sabiendo firmar un testigo, puede hacerlo otro de estos a su ruego; deben poner con cuerdas pendientes su sello, si alguno no lo tiene, puede hacerlo con el de otro. El testador firmara tambien al fin diciendo, yo fulano otorgo que hice este testamento de la manera que esta escrito: si no sabe o no puede escribir puede hacerlo hacerlo otro por su mandato.

"En el caso de querrer uno hacer el testamento debe escribirlo por si, si no sabe, llamar a otro en quien tenga confianza para pue lo haga, despues lo doblara y pondra siete cuerdas con las cuales le cierra, y para que de las mismas pendan los siete sellos, dejara un huecho en blanco en la parte esterior para que firmen los testigos; despues de llamados y rogados, mostrandoles la carta cerrada les dira que aquel essu testamento, y les rogara que lo firmen y sellen, firmara el tambien o hara que firmen por el, diciendo que aquel es su testamento, y les rogara que lo firmen y sellen, firmara el tambien o hara que firmen por el, diciendo que aquel es su testamento que hizo o mando hacer (law 2).

"Debera una vez comenzado continuarlos sin interrupcion hasta su fin, a menos que la enfermedad causase la interrupcion o viniera por alguna de las necesidades naturales (law 3).

"Rompiendo algunos de los sellos de la carta en que hubiese heco su testamento, cortando algunas de las cuerdas, o raspando los signos hechos por el escribano publico, o rompiendolos, se invalida el testamento, a menos que se probara que esto occurrio por ocasion, y que no fue hecho a sabiendas (law 24)."

In English:

"And the other (kind of will) is that which is called in Latin *in scriptis testamentum*, which both means to say and requires that it be made in writing and in no other manner. This testament must be made before seven witnesses, called and requested by him that makes it; the servant, the wife, the minor of 14 years and the man of bad fame may not be a witness; they must write at the end their name, saying: 'I, A. B., am a witness to the testament of C. D., which he made, I being present.' A witness not knowing how to sign, another of them may do so at his request. They must put their seal with hanging strings. If any one has no seal, he may do so with the seal of another. The testator shall sign also at the end saying: 'I, C. D., declare that I made this testament in the manner in which it is written.' If he does not know how or can not write another may do so by his order (law 1).

"In case one wishes to make the testament he must write it for himself. If he does not know how (he must) call another in whom he has confidence in order that he may do so. Thereupon he shall fold it, and shall put seven strings, with which he shall close it, and so that the seven seals may depend from the same. He shall leave a space in blank on the outside part so that the witnesses may sign. When they are called and requested, showing them the closed letter, he shall say to them that that is his testament, and he shall request them that they sign and seal it. He shall sign also, or shall have them to sign for him, saying that that is his testament which he made or ordered made (law 2).

"(The proceedings) once begun it must be continued without interruption until the end thereof, unless sickness should cause the interruption, or it should come by some of the necessities of nature (law 3).

"Breaking any of the seals of the letter in which he has made his testament, cutting any of the strings, or scratching the marks made by the Notary Public, or breaking them, invalidates the testament, unless this is proved that it occurred by accident, and that it was not done wilfully (law 24)."

It will be observed that the alleged will under discussion was not "MADE BEFORE seven witnesses" as required both by the *Siete Partidas* and the Laws of Toro. It was made, "being witness to the same Don Matias Cervera, Sub-lieutenant of the regiment of Louisiana, Don Jose Garcia Capetillo, Don Bernardo Molino" (three witnesses), "signing as my friend Don Jose Maria de la Pena, friend of Gabriel de Rivas, as he could not write." It does not appear that even these three witnesses were "called and requested by him that makes it," that is, by Gabriel de Rivas. Seven witnesses did not "write at the end their names, saying: 'I, A. B., am a witness to the testament of Gabriel de Rivas, which he made, I being present.'" Nor does it appear that seven witnesses "put their seals with hanging strings." Nor did the "testator sign

also at the end, saying; 'I, Gabriel de Rivas, declare that I made this testament in the manner in which it is written.'" Gabriel de Rivas did not sign on the cover of the will, nor did the witnesses sign on the cover for him, saying that this is his testament, which he made or ordered made. Gabriel de Rivas's name does not appear either at the end of the will nor on the cover thereof. This alleged will of De Rivas, in order to have been valid in accordance with the laws of the Kingdom of Castile, in force in the province of West Florida in 1807, namely, the *Siete Partidas* and the Laws of Toro, must have been executed before a notary public and seven witnesses, who some think should have been residents and others not. All must have signed on the cover, together with the testator and the notary, although in case one of them did not know how to write some might have done so for the others; provided always that there appeared eight signatures and the mark of the notary. The two principal elements of security in the making and execution of wills, namely, the testator's name signed by himself or by another at his request, and the authentication of the notary, are lacking from this alleged will of Gabriel de Rivas. There never was a time from the earliest days of Spanish law down to the present when a valid closed will could be made without the intervention of a notary.

The learned jurisconsults Serna and Montalban, in their Elements of the Civil and Penal Law of Spain (Vol. 2, p. 9) say:

"The written testament is that which is made by the testator expressing his will in a reserved manner and in a sealed writing. To execute a written or closed testament at least seven witnesses and a notary must concur. The character of residents seems indispensable in the witnesses; for, although the law does not so provide, its spirit can not be otherwise, since its object was to make sure of the authenticity of the written will, increasing

the number of witnesses, and not changing their attributes. The testator presents them the closed testament, which has to be signed on the cover by him, and by the witnesses, and also bear the mark of the notary."

This alleged will under discussion lacks the solemnities required by law for it to have been valid, to wit, the intervention of witnesses to the number required, and the want of intervention of any notary whatsoever. Says the Supreme Court of Justice of Madrid (Sentence of September 26, 1862):

"Exigiendo las leyes como solemnidad para la validez de los testamentos) la intervencion de los testigos en el numero que las mismas prescriben, no pueden contarse para este efecto los que carecen de la aptitud legal necesaria.

"Cuando en el documento autorizado por el Escribano aparece no haber intervendo en el testamento el numero de testigos habiles, necesario para su validez, esta falta no puede suplirse, con otras personas de que no se haga mencion en el, por mas que se hayan hallado presentes en aquel acto, pues aun cuando su testimonio pueda constituir un medio ordinario de prueba en otro caso, no es suficiente ni admisible para subsanar el defecto de solemnidad requerida en los testamentos."

In English:

"The laws requiring as a solemnity for the validity of testaments the intervention of witnesses to the number which the same prescribe, those who lack the necessary legal capacity can not be counted upon for this purpose.

"When in a document authorized by a notary there appears not to have intervened in the testament the number of competent witnesses, necessary for its validity, this error can not be supplied by other persons of whom no mention is made therein, although they may have been present at that proceeding; for, although their testimony may constitute an ordinary means of proof in other cases, it is neither sufficient nor admissible to supply the defect of solemnity required in testaments."

But it may be suggested that, although seven witnesses did not concur in the making and signing of the said alleged will, nevertheless the cover shows the signatures of seven witnesses, and hence the defect may be considered as having been corrected in that manner. The answer to this is, that the law required not only the names of seven witnesses on the cover of the will, but also the name of the testator, signed by himself or another at his request, and also the mark of the notary (*supra*).

It will be observed that the body of the alleged will of Gabriel de Rivas appearing in the record above copied is set forth on pages 128 and 129. What was apparently the cover of the said alleged will is set forth at the bottom of page 127 and top of page 128. At the top of page 127 appears what purports to be a copy of the proceedings for the opening of the will, namely, the examination of one of the seven witnesses signing on the cover thereof, to wit, Manuel de Lara. Page 130 contains what purports to be a copy of the rest of the proceedings for the opening of said will. The body of the alleged will and also the cover thereof are dated February 27, 1807. The proceedings for the opening of the will are dated April 30, 1808. The attestation clause of the will is as follows (Record, p. 129):

"In testimony of which this will is made in the City of Pensacola, on the 27th day of Feb'y, 1807, being witness to the same, Don Matis Cervera, Sub-lieutenant of the regiment of Louisiana, Don Jose Garcia Capetillo, (and) Don Bernardo Molino, and signing as my friend Don Jose Maria de la Pena, friend of Gabriel de Rivas, as he could not write.

"(Signed) JOSE MARIA DE LA PENA.
"(Signed) (1) MATIAS CERVERA.
"(Signed) (2) BERNARDO MOLINO.
"(Signed) (3) JOSE GARCIA CAPETILLO."

The cover of the said alleged will is as follows (Record, pp. 127, 128):

"We, the undersigned, affirm that having been called by Gabriel de Rivas, whom we all know perfectly, who was sick in bed, but as it seemed to us to be in possession of his full senses, who showed us a document sealed with seven seals of wax on the cover, informing us that it was his last will and testament, that he desire (desired) the same to be opened and published after his death, that it contained all that was required, i. e., his profession of the faith, the naming of heirs and administrators, and requested us to be witnesses to his last declaration, and to make it effectual we signed the same in the city of Pensacola the 27th day of February, 1807.

"(Signed) (1) MENUEL DE LARA.
"(Signed) (2) FRANCISCO GONZALES DE TORITE.
"(Witness) (Signed) (3) ANTONIO MONTERO.
"(Signed) (4) JOSE MARIA MESA.
"(Signed) (5) RAMON SANTIAGO.
"(Signed) (6) PABLO GRANPNA.
"(Signed) (7) FELIPE PREITO."

It is suspicious that the execution of the will and the cover lacked the intervention of any notary. It is also suspicious that the name of the testator does not appear either in the attestation clause of the will or on the cover. It is suspicious that no one of the three (or four) witnesses to the making of the will appears as a witness on the cover thereof. The record shows, moreover (p. 127) that there "appeared before the said commissioners Don Manuel de Lara, who being duly sworn in due form of law before us the said commissioners, and having been shown a document closed and sealed, upon the cover of which was found his signature, *he was asked if it was his signature, and if he was present at the making of the will.*" From "all that the witness Manuel de Lara had to say on the subject," it does not appear that he acknowledged

that it was his signature that appeared on the cover of the will, nor did he state that he was present at the making of the will by the deceased, as he was asked, and was bound to testify. He could not so testify because the will shows that he was not present as a witness at the making of the will.

It is suspicious that the will itself speaks in the present tense, and that the cover thereof speaks in the past tense, leaving it reasonable to suspect that the cover might have been prepared only at the time of the opening of the will in 1808, a year after the date of the will itself. Having opened the will and read it, the Commissioners Hernandez and Folch stated (Record, p. 130): "That the same (the will) is legal; and, according to decree and judicial procedure, the same is to be copied into the Quaderno," or registry. If the will was legal and valid, there would seem to have been no necessity for making this certificate. If it were illegal and invalid, the certificate of two commissioners could not make it otherwise. It nowhere appears that the will was copied into the quaderno or registry, as it was required to be copied and registered by the laws in force at the time. These numerous suspicious circumstances appear on the face of the document itself. They are such as to render the document not admissible or sufficient as an ancient document. The will itself, lacking, as has been shown, the fundamental solemnities and safeguards expressly required by the statute for its validity, is, in our opinion, absolutely null and void *ab initio*, and should not have faith or credit either in court or out.

RUNCIE, PORTUONDO & LAMAR.
HILARIO PORTUONDO,
LUCIUS Q. C. LAMAR.

UNITED STATES CONSULATE GENERAL:

HABANA, *Sept.* 2, 1903.

Lucius Q. C. Lamar, being duly sworn, deposes and states: That he is an attorney and counsellor at law; that he resides in the City of Habana; that he speaks, reads and writes the Spanish and English languages; that the extracts in Spanish contained in the foregoing opinion are true and correct copies of their Spanish originals respectively; and that the translations therof are true and faithful. And further deponent saith not.

LUCIUS Q. C. LAMAR.

Subscribed and sworn to before me this 2d day of September, 1903. Witness my hand and the seal of this Consulate General at Havana.

JOSEPH A. SPRINGER,

[SEAL] *U. S. Vice and Deputy Consul Gen'l.*

IN THE

Supreme Court of the United States.

October Term, 1904.

FLORIDA MCGUIRE and MATILDA CARO,
Plaintiffs in Error,

v.

WILLIAM A. BLOUNT, WILLIAM FISHER, PENSACOLA CITY COMPANY, *et al.*
Defendants in Error.

No. 134.

Brief for Plaintiffs in Error.

The Case.

This is an action of ejectment, brought by citizens of Alabama and Texas against citizens of Florida, before the Honorable Charles Swayne at Pensacola, Judge of the Circuit Court of the United States for the Northern District of Florida; and in that court and in the United States Circuit Court of Appeals for the Fifth Circuit, to which court the case was taken by writ of error, the case was decided adversely to plaintiffs in error here. Upon petition that the case might be reviewed and determined by this court in accordance with the provisions of Section 6 of the act of Congress entitled "An Act to establish circuit courts of appeal and to define and regulate in certain cases the jurisdiction of the courts of the United States, and

for other purposes, affirmed March 3, 1901," this court, November 17, 1903, issued a writ of certiorari to bring the case before it.

The errors here assigned are the same as assigned in the petition for the writ of error in the Circuit Court of the United States for the Northern District of Florida (pp. 385–390, Rec.).

I. Assignments of Error.

First. The court erred in refusing to recuse the Hon. Charles Swayne, the Judge of the District Court, acting as Circuit Judge, for the reason that the wife of said Judge, Mrs. Lydia C. Swayne, was personally interested in this cause.

Second. The court erred in admitting in evidence the record in the case of A. V. Caro *v.* Samuel Chardon and Nathaniel Thurston, trustees of the Pensacola City Company in the Circuit Court of the State of Florida, First Judicial Circuit of Escambia County.

Third. The court erred in admitting the testimony of A. V. Caro taken in said above-entitled cause.

Fourth. The court erred in admitting in evidence the abstract of title made by Joseph E. Caro and overruling plaintiff's objection thereto.

Fifth. The court erred in admitting in evidence a large mass of documents in block offered by defendants and in overruling plaintiffs' objection thereto and to said manner of offering said documents. That said documents should have been offered one by one and submitted to plaintiffs' counsel for inspection and objection and the court should have ruled on the admission of each document as offered.

Sixth. The court erred in overruling plaintiff's objection to the evidence offered by defendants of certain ducuments offered by defendants, viz: (1) Will of Gabriel de Rivas. (2) Certified copy made by R. S. Scarlett of the will and

probate thereof of Gabriel de Rivas. (3) Translation of the will of Gabriel de Rivas. (4) Translation of probate of will of Gabriel de Rivas. (5) Certified copy of proceedings to sell a certain house by Maria Moreno, certificate made by Scarlett, surveyor-general. (6) Translation of above documents. (7) Translation purporting to be a petition made by Maria Moreno, as executrix, for the sale of this particular property in this cause in order to pay certain debts of the estate and the proceedings upon the sale, petition sale and disbursement of money arising therefrom. (8) Original proceedings in Spanish of above. (9) Translation into English from the Spanish manuscript archives of West Florida in the matter of the sale of three hundred arpents of land belonging to Gabriel de Rivas. (10) Translation purporting to be a petition by Maria Moreno, as executrix, for the sale of the property in controversy to pay debts and the proceedings thereunder. (11) Translation in connection with the authorization of Maria Moreno, executrix, to sell the land above mentioned. (12) Translation pp. 425 of book of the proceedings of the commissioners of the settlement of land claims in West Florida, purporting to be those proceedings and giving the title to this ground. (13) Proceedings before the commissioners for the settlement of land claims in West Florida. (14) Pages 332 and 333 book A, proceedings of the commissioners. (15) Plat certified by Joseph V. Caro, keeper of public archives, as being plat of lands in question, approved and confirmed by the commissioners, particularly No. 7. (16) Acts of Congress of 1826, p. 156, United States Statutes at Large, Vol. 4. (17) Certified copy of translation of deed from Gregoria Caro to James Fitzsimmons, Samuel Smyth and John Chabeaux for said tract of land. (18) Certified copy of deed from James Fitzsimmons to John Chabeaux for same land. (19) Certified copy of partition

between John Chabeaux, Louis De Conde Morant and Lorenzo Millaudon. (20) Protocol in favor of Thomas Marshall and Joseph Marshall.

Seventh. The court erred in overruling objection of plaintiffs to the admissibility of said documents, because: 1st. That Gabriel de Rivas was living at the time of the pretended sale and that the said protocols were and are fraudulent, spurious and forged. 2d. That there is no proof of the authenticity of said documents or of the official capacity or of the signatures to said documents. 3d. That there is no proof that said documents or any purported transfer made therein, were ever recorded either in the registry books of the Spanish regime of West Florida, or in any of the record books of the American regime, and the same are, therefore, null and void and of no effect against plaintiffs. 4th. That there is no description in the said pretended transfer made therein of the property at issue in this cause. That no plat is annexed thereto; that the property referred to therein is not described by metes and bounds and other descriptions resulting from the title of Gabriel de Rivas, as required by Article VII of the regulations of Morales of the Spanish regime and without which said title is absolutely null and void. 5th. That the Pensacola City Company, or any guarantors or assigns thereof privy to said company, are now estopped from contending that these said papers termed the protocol were or are original Spanish records or ancient documents, as in the suit of E. J. Caro *v.* Pensacola City Company, United (States) Circuit Court of the Northern District of Florida. In 1884 the said defendants claimed in their answer that said documents had only been discovered after said filing of said suit, which allegation in said answer is in words and figures as follows: "That the suit was brought upon the supposition that there was no recorded evidence of a sale of the said land

by Gabriel de Rivas or his representatives, but soon after the suit was instituted, on a thorough search of the Spanish archives, the office at Pensacola, the above referred to proceedings were found," which answer in full is hereto annexed as Exhibit "D" and made part of this assignment of error. 6th. That said protocol is not a public document, as no certificate of the keeper of the Spanish archives is attached thereto, either of the filing thereof in his office or the authenticity of said documents, and the same is inadmissible in evidence, and do not prove themselves. (7th) That even if said papers are admissible and proven, that under the laws of Spain the officer selling said property as set forth therein (A) was without said power to make said sale; (B) the condition precedent in the sale of minors' property were not observed; (C) that the ancestress of your claimants, Paula Rivas, did not sign said act; (D) that the property therein was adjudicated to a minor without capacity to purchase, and said sale was and is a nullity. To which offer counsel for plaintiffs also objected on the following grounds: 1st. That the best evidence that the nature of the case is susceptible of must be produced. That said translation being only copies and the originals thereof in the Spanish language, that the registry of said original, duly certified by the Spanish authorities, must be submitted or its absence accounted for before said translation; secondary evidence thereof can be offered or admitted. 2d. That said purported transfer of Gregorio Caro to Fitzsimmons, Smyth and Chabeaux, never having been recorded or made of record in the Spanish archives, that no purported translation thereof can take the place of said missing documents or supply said defendants with a title. Said translation being only auxiliary to the proper title under the Spanish regime.

Eighth. The court erred in permitting parol testimony

of A. C. Blount to prove payment of taxes for the reason that said testimony was not the best evidence.

Ninth. The court erred in permitting William Fisher, a witness on behalf of defendants, to answer the following question over the objection of plaintiffs, to-wit: "Q. Do you know who has paid taxes to the land since 1887?" and in overruling plaintiffs' objection thereto.

Tenth. The court erred in refusing plaintiffs' request to charge the jury as follows, to-wit: "A complete Spanish grant of 1806 was sufficient to invest in the grantee and in his heirs all right and interest in the property granted."

Eleventh. The court erred in refusing to charge the jury as requested by plaintiffs, as follows: "That such a complete grant was perfect and need not be presented to or confirmed by the American commissioners, and that any *ex parte* action by which other parties than the grantees obtained a confirmation of this title or acknowledgment of any transfer thereof (unless it be proved that the orignal grantee or his heirs were represented in such proceedings before the American commissioners), were and are not binding on the heirs of such grantees."

Twelfth. The court erred in refusing to charge the jury as requested by plaintiffs as follows: "That Spanish official document purporting to sell this property in October 21st, 1817, must be shown to be the official records from the Spanish archives, and must bear the original certificate of filing in the office of the proper custodian of records under the Spanish Government, and the same must have also been duly recorded or registered in the proper conveyance records under the Spanish Government and must bear the proper certificate thereof."

Thirteenth. The court erred in refusing to charge the jury as requested by plaintiffs, as follows: "That a party relying on a documemt or deed must prove the genuineness of the same."

Fourteenth. The court erred in refusing to charge the jury as requested by plaintiffs, as follows: "That where the party relies upon a deed as an ancient document evidence of its antiquity must be furnished, or the party must show that the same has been constantly kept in the archives."

Fifteenth. The court erred in refusing to charge the jury as requested by plaintiffs, as follows: "That where documents are admitted in evidence and it is claimed that said documents are inauthentic or are spurious or forged, that it is for the jury to decide these questions of fact and they are empowered to consider the time of the production of said documents and the other surrounding facts in reaching this conclusion.

Sixteenth. The court erred in refusing to charge the jury as requested by plaintiffs, as follows: "That if the jury find that said documents are genuine and authentic, then it is for the jury to decide if they purport to transfer the property in question in this suit away from the estate of the ancestor from whom plaintiffs claim.

Seventeenth. The court erred in refusing to charge the jury as requested by plaintiffs, as follows: "That in reaching the conclusion they have a right to find out whether the property therein was sufficiently described to transfer ownership to the purchaser."

Eighteenth. The court erred in refusing to charge the jury as requested by plaintiffs, as follows: "They have also the right to decide whether this was a partition or succession sale, and if the former whether the same was signed by the proper parties."

Nineteenth. The court erred in refusing to charge the jury as requested by plaintiffs as follows: "That a husband under neither the Spanish, civil or common law can stand in judgment for his wife or appear in any judicial proceeding for her in any way where her rights to real

estate are concerned, unless he be authorized to do so in writing by the wife, or be joined with the wife in the action."

Twentieth. The court erred in refusing to charge the jury as requested by plaintiffs as follows: "That a husband cannot sell or sign away the separate estate of his wife without her written consent signed by her."

Twenty-first. The court erred in refusing to charge the jury as requested by plaintiffs, as follows: "That the property inherited by the wife from her parents is her separate property."

Twenty-second. The court erred in refusing to charge the jury as requested by plaintiffs, as follows: "That not only the husband can not sell the property of his wife or sign away her rights to real estate, but even where the wife signs the act with him, if she be not first examined by the notary separately and apart from her husband, the deed is void, although the purchaser has paid the consideration and gone into possession of the property."

Twenty-third. That the court erred in refusing to charge the jury as requested by plaintiffs, as follows: "That under the statutes of this State the decision by a judge in a case in which his brother-in-law is interested is absolutely void."

Twenty-fourth. The court erred in refusing to charge the jury as requested by plaintiffs, as follows: "That an injunction issued in such a case is absolutely void and a party deprived of possession by such illegal dispossession or injunction is not legally dispossessed thereby, because the party obtaining said illegal decree can not take advantage of his own wrong."

Twenty-fifth. That the court erred in refusing to charge the jury, as requested by plaintiffs, as follows: "That in all cases where the wife is required to sign away her interest, that the provision of section 1958, Florida Re-

vised Statutes, must be followed, and we ask your Honor to read this section to the jury: 'That as to sales, conveyances, transfers or mortgages of the wife's separate estate prior to 1835, both the husband and the wife must sign according to section 1969 of the Revised Statutes of Florida,' which section we also request the court to read to the jury."

Twenty-sixth. The court erred in granting the motion of counsel for defendants that the court should instruct the jury to render a verdict for defendants in the case and overruling plaintiffs' objection to said motion.

Twenty-seventh. The court erred in the judgment and decree entered upon the verdict of the jury in this cause.

Twenty-eighth. The court erred in rendering an absolute judgment in favor of defendants and against plaintiffs herein.

Where the errors assigned are of a similar nature they will, in order to shorten this brief and save repetition, be treated of together instead of separately.

Consideration of the case will however be aided if before discussing specific errors we state the basis of the claim of plaintiffs in error and the line of defense sought to be established thereto.

II. Plaintiffs in Error's Case.

Plaintiffs in error prove that they are the heirs of Gabriel de Rivas (pp. 32, 33, Rec.). This heirship is not disputed. They prove that Gabriel de Rivas died seized and possessed of 300 arpens of land, described (pp. 29, 30, Rec.), the said land having been granted to him by the Spanish Government (pp. 26–29, Rec.). Translation of this grant, pp. 29–32 Rec. This grant is by all parties admitted to be the origin of title to this property. That

Gabriel de Rivas died in possession of the property in dispute and the said property was transmitted by operation of law to his heirs and wife. That the heirs of Gabriel de Rivas were in possession through their mother. That there was no change of that possession but that it continued through Paula de Rivas to the wife of Joseph E. Caro and the daughter of Gabriel de Rivas (pp. 32–34, Rec.). The sworn statement of Fernando Moreno offered by defendants in error, is that Gabriel de Rivas commenced improving the said tract of land between four and six months after he had obtained the grant, continued the cultivation more than three years, and had about four acres cleared, enclosed and in cultivation (Exhibit 17, p. 229, Rec.).

Plaintiffs in error proved possession of the property. A. V. Caro knows that his father claimed this land for his wife, got wood off it, and the witness himself lived there in 1869, and is still living there and acts as agent for the other heirs (pp. 33, 34, 39, 56, Rec.).

Ephriam J. Pleasants was told in 1867 by A. V. Caro that he Caro was agent, and stayed on the land by permission of Caro, and paid rent to him (pp. 68, 69, Rec.).

Alphonse Villeneuve had lived on the land 30 years next August, and Mr. Caro gave him the right to live on it (p. 70, Rec.).

W. E. Leggett states that Mr. Caro put him and his mother there to see that nobody trespassed. That he was there a year or two, and that this was about 30 years ago (pp. 70, 71, Rec.).

Alexander Robinson had lived on the land for 27 years, and had gone there by the permission of Mr. Caro, somewhere about 1870 (p. 71, Rec.).

June 17, 1889, certain tenants, some forty in number, were ordered and directed by a decree of the Circuit Court of Escambia County, Florida, to make payment of rent to

one Wm. Fisher, receiver (p. 91, Rec.), all being persons who had been renting from the defendants in that suit, *i. e.* the Rivas heirs, which is evidence that possession had been exercised by such heirs.

The bill of complaint resulting in the order of June 17, 1889, above mentioned also contains such evidence. It is sworn to by one of the complainants in that suit, Peter Knowles, through whom both William A. Blount and William Fisher, defendants here, claim and charge A. V. Caro with making sales of parts of the land and writing to tenants and selling wood cut from the land (p. 61, Rec.).

Here it should be stated that we contend, for reasons that will be hereafter discussed, that the decree of June 17, 1889, of the Circuit Court of Florida for Escambia County was null and void. The litigation out of which resulted the decree ordering the dispossession of the Rivas heirs is not yet settled. No statute of limitation has run, and such statute was not and could not have been successfully pleaded below in the present case. That none of defendants in error pleading ~~affect~~ title through this decree.

Bearing upon possession since 1889 is the testimony of A. V. Caro, that he is still living on the tract (p. 33, Rec.). From the testimony of William Fisher (p. 87, Rec.), appointed receiver as above stated, it certainly is not very clear that he ever took possession of this property, even if his holding as receiver for the interest of all parties concerned could be considered as adverse possession to plaintiffs in error here; and further he does not set up possession under this appointment, or possession at all as a defense to this suit, but relies upon deeds of recent date to certain portions of the tract (pp. 351–372, Rec.). Furthermore, it appears that both respondents William Fisher and William A. Blount once since 1889 have recog-

nized ownership by A. V. Caro in this tract. J. W. Frater (pp. 83, 84, Rec.) testifies that he bought five lots of the tract from A. V. Caro. This was about 1892. And that he sold these five lots to William Fisher. That he did not purchase directly any property from any one except Caro, and that in making the purchase W. A. Blount was his lawyer, prepared the deeds, and that he (Frater) accepted what Blount did.

We contend that where, as in this case, the common origin of title is admitted, and the plaintiffs in error show an actual prior possession of the land, that this is sufficient to enable them to recover it as against defendants who may undertake to establish an outstanding title in another from whom they do not even attempt to show that they derived title, but claim under deeds of recent date from 1896 to 1900; all from absolute strangers to the title, and under which deeds they do not show possession.

III. Defendants in Error's Defense.

The following defendants below, W. A. Blount (p. 8, Rec.), William Fisher (p. 9, Rec.), Thomas C. Watson (p. 11, Rec.), James M. Bullard (p. 12, Rec.), John H. Williams (p. 13, Rec.), all plead not guilty. The Pensacola City Co. was not found (p. 6, Rec.), and R. A. Fisher (p. 10, Rec.) and Julia A. Young (p. 12, Rec.) each entered a disclaimer. Of the defendants pleading not guilty, John Williams and John W. Bullard offered no evidence of title to themselves from any one. W. A. Blount, William Fisher, and Thomas C. Watson offered alleged deeds of recent date from parties entire strangers to the title, as follows:

William A. Blount traces title from Thomas C. Watson, March 2, 1899 (p. 342, Rec.); from C. C. Younge heirs, 21st October, 1890 (pp. 343–4, Rec.); from Peter Knowles,

31st March, 1899 (p. 345, Rec.); from Edward W. Perry, 24th May, 1892 (pp. 346–7, Rec.); Peter Knowles, 30th July, 1890 (pp. 347–8, Rec.); A. A. Fisher, master, on decree against one Tate, F. G. Wrenshaw, A. E. McDavid and Fred Baher, November 2, 1896 (pp. 349, 350, Rec.).

William Fisher traces title from Peter Knowles, March 27, 1897 (p. 351, Rec.); from W. H. Knowles, 21st June, 1900 (p. 352, Rec.); from E. C. Benedict, 12th June, 1897 (p. 354, Rec.); Peter Knowles, 18th May, 1897 (pp. 355–6, Rec.); S. Tate and wife, 3d January, 1898 (p. 357, Rec.); C. R. Simmons, 11th January, 1900 (p. 359, Rec.); Peter Knowles, 21st May, 1897 (p. 360, Rec.); P. K. Young and wife, 26th July, 1888 (p. 362, Rec.); W. A. Blount, 12th July, 1900 (p. 364, Rec.); F. A. Booth, 23d December, 1890 (p. 365, Rec.); Chas. J. McLellan, 27th August, 1891 (p. 367, Rec.); S. Tate, 14th June, 1897 (p. 368, Rec.); John W. Frater to Wm. Fisher, 7th July, 1897 (p. 370, Rec.).

Thomas C. Watson traces title from Peter Knowles, 16th August, 1886 (pp. 338–340, Rec.).

That as to Mrs. C. C. Younge, widow and executrix or administratrix of C. C. Younge, that the said C. C. Younge traces title from Walter Tate, under date of August 16, 1894 (p. 341, Rec.).

It is attempted to show, as appears from the conveyances just cited, that one of the respondents, William Fisher, derived title to certain lots from John W. Frater, and that Frater derived title from A. V. Caro, one of the Rivas heirs; but it is not attempted to show that Frater derived title from Gregario Caro, to whom respondents rely on title to the property having passed away from the Rivas heirs in 1817.

That none of these defendants in error offered any evidence of ever having been in possession. These deeds of

recent date from parties of the origin of whose title there is no evidence; that are not shown to have had any connection whatever with the title, except as may appear from these deeds, or ever to have been in possession, constitute the entire defense, save an endeavor to show an outstanding title in another from whom there is no endeavor to trace title. This outstanding title is endeavored to be established in the following way:

OUTSTANDING TITLE NOT SHOWN.

Gabriel de Rivas as admitted, acquired this property under a grant from Spain in 1806, and the genuineness and authenticity of the grant and its record at the time it was made, in conformity with the requirements of law, are all proved; and the grant is not disputed. But defendants in error seek to establish that Gabriel de Rivas left a will, and in administering his estate under that will this property was in 1817 sold, the title passing at that time out of his heirs and finally finding lodgment in one Gregario Caro. The beneficiaries under this purported will were the heirs of Gabriel de Rivas, from whom plaintiffs in error derive title and through whom they claim. The defendants in error offer what counsel calls proceedings of Maria Moreno to sell this particular piece of property for payment of debts and disbursement of proceeds (Ex. 13, pp. 153–186, Rec.). Translation thereof (Ex. 14, pp. 186–222 Rec.), pp. 198–203, Rec. being a copy of the purported petition for the sale of this particular property, found pp. 145–153, Rec.

These documents are offered to prove an administration under the will, the administration covering the sale of the property in question. Objection was made to the admission of all these documents, and these objections will be treated of further on; but independently of the question of their genuineness, authenticity and admissibility as

evidence, they would not prove an alienation of the property.

THE ALLEGED SALE UNDER THE WILL.

The law at the time was as follows:

"The executors ought to publish the testament within a month, under the penalty of losing their legacy; and, if there was none left, then of paying the tenth, and moreover they are obliged to fulfill the will of the testator within a year, at farthest, countable from the death of the testator, the act of one, or more, in case the whole can not be present, being valid.

"If it should happen that the executors are neglectful in complying with their duty or obligation, they shall be compelled to it by the bishop, and not obeying he shall appoint other executors."

1 White's Recop. 127, 128.*

Yet the document offered refers to a sale of property nine years after the purported death of Gabriel de Rivas, *i. e.* in 1817.

The document (p. 145, Rec.) is addressed to "His Ex. the Governor," and purports to be signed by Mr. Eugenia Anto Sierra, Testamentary Executor of Gabriel de Rivas. This person, by the purported will was named as guardian to the minor children; and Maria Moreno as administratrix. Her name does not appear to this document, or anywhere as giving assent to what was done. It bears date of September 13, 1817. It sets out that it appears to the writer that the accounts are in conformity with the heavy expenses incurred with the widow's numerous family. Refers to the cost of repairing property, and

* White's Recopilacion is a work promulgated and sanctioned by an act of Congress, and consequently this court can take judicial notice of the same. Furthermore, this court has held that it was as much bound judicially to notice the laws and regulations of territory ceded to the United States, as the laws of a State of the Union. *United States* v. *Chaves*, 159 U. S. 459.

heavy expenses owing to sickness in the family; and then (and this is all that is said relative to this land, or relative to petitioning anything):

"And as to what refers to the 300 arpens of land, they should be valued and sold to add the proceeds to the common fund and make partition to the minors to secure to every one what may correspond. It being at the wise authority of the tribunal to decree what according to justice it may deem proper, I having answered the proceedings that were served upon me of the date of the 9th instant."

This document, styled by counsel a petition by Maria Moreno, whatever it may be, certainly is not the proceedings before a tribunal authorized to sell lands. It is dated September 13th, and refers incidentally to the signer of the document having answered proceedings that had been served upon the writer "on the 9th instant." What these proceedings were, or before whom, does not appear. The Governor of West Florida, under the Spanish law then in force, to whom it must be supposed that Eugenio Anto Sierra is writing, had no authority to administer the estates of decedents. If respondents propose to prove a sale they must show the proceedings of some tribunal that had jurisdiction to make such sale. The indefinite reference in this document to having answered proceedings that were served on the writer, and to 300 arpens of land, is not legal proof of what the proceedings were, or that they related to this land now in question.

Then follows what purports to be the return of the service of a notice of some character, and then what purports to be a statement of Eugenio Anto Sierra, before "Your Ex."

"That it having been ordered by the tribunals by the decree of the 17th instant, to value the arpens of land

belonging to this estate to sell them at public outcry, etc., your excellency will please order that by the same tribunal two appraisers be appointed to assess the value of the land, and that this be done, that what there is to be carried out."

Here again is a reference to a sale having been ordered on the 17th instant, by the tribunals, but the order of the tribunals is not given, nor a description of the land to be sold. Reference to an order of sale in a report to the Governor is not legal evidence of an order, or of what the order was. Both whether there was an order, or if so what it was, is left to inference. There is a note by the translator (p. 146, Rec.) to see this order, toward the latter part of this valuation. All we can find that this could refer to is the statement, about the middle of the next page, 147, Rec., dated October 17, 1817—

"Let the valued land be sold at public outcry at the time ordered," etc.,

with the four names, Mosart, Domingo Sausa, Fernandez, and Jose Sevarus, signed to it. On pp. 150, 151, Rec. is found the document relied on to prove a sale. It is as follows:

"In the City of Pensacola on the twentieth of Oct., eighteen hundred and seventeen, in the Audience Chamber, being present Mr. Joseph Masot, Military and Political Commandant of this province, associated with the auditor of war and assessor general thereof, with the view of carrying out the sale that was ordered of the three hundred arpens of land belonging to the estate of Gabriel Rivas, deceased, which after the previous calls that were given with the drum, according to custom were offered at public outcry by Joseph Cortez, he announcing clearly and distinctly the piece of land that was sold and exhibiting the figurative plan and the persons attending the sale being informed, of the locality, amount and price in

cash at which it would be knocked down, John Chebeaux bid two hundred and fifty dollars, Gabriel de Rivas five hundred and seventy dollars, the said John five hundred and seventy-one dollars, and then Gregario Caro augmented the bid to five hundred and seventy-two dollars, and the hour having arrived, and the said bid having again in a loud and intelligent voice been cried out by the said Cortez and there being no other person who offered a higher bid, notwithstanding the said bid being cried out several times, it was ordered by their worships in view of its being the hour fixed for closing the sale, that it be knocked down, which with the three customary raps was done to Gregario Caro, and that it may appear he signs with the curator and heirs that were present and to their worships to which we give faith.

GREGARIO CARO,
EUGENIO ANT'O SIERRA,
DOMINGO SAUSA,

FERNANDO MORENO,
JOSE CEVALLOS,
GABRIEL RIVAS,
For my wife, Mrs. Paula Rivas:
JOSE ESTAVAN CARO."

This document merely recites what was done with the view of carrying out the sale that was ordered of the 300 arpens of land belonging to the estate of Gabriel de Rivas. It does not show that it was the land contained in the grant to him from the Crown of Spain, nor what 300 arpens it was. It states that the auctioneer announced clearly and distinctly the piece of land that was sold, and exhibited the figurative plan, and that the persons attending the sale were informed of the locality, amount, and price in cash at which it would be knocked down; but it is left entirely to conjecture what piece of land the auctioneer announced clearly and distinctly, what figurative plan he exhibited, and of what locality the proposed purchasers were informed.

It is stated that Gregario Caro was the highest bidder;

that it (the property) was ordered by their worships, and was knocked down to him, but the order is not given. Then (p. 151, Rec.) it is stated that the bidding is approved, and as it appears from the former proceedings that Gregario Caro has paid the assistant witness the amount of $572.00 ordered, that this amount be deposited in the public office, while another order is given, and that testimony be issued to the purchaser, of the proceedings of the sale, and of this proceeding, if he solicit the same, that it may serve him as a title in form.

If any testimony issued to serve him as a title, it is not put in evidence. There is no decree offered ordering a sale by any tribunal shown to have jurisdiction of the estates of decedents. There is no deed. There is no evidence of Gregario Caro ever having taken possession under these purported proceedings. The documents are not shown to be official records of any transactions, and respondents certainly can not establish a decree of sale by a competent judicial tribunal and a sale under the decree which it is incumbent upon them to establish, by merely offering documents that refer to a sale having been ordered and having taken place. The persons whose names purport to be signed to these documents are nowhere shown to have been officials at the time of the occurrences recited, nor is it shown that the documents are the record of their official action. What was said in *Sabariego* v. *Maverick*, 124 U. S. 261, where it was attempted to infer the confiscation of property by reference to such confiscation, expressly applies here. In that case the court said:

"Notwithstanding all these recitals, and the inferences and implications that are sought to be derived from them, it still remains that the alleged confiscation of the property of Miguel Losoyo, if it ever took place, could have been lawfully effected only by means of a formal judicial

proceeding, which must be primarily proved by the official record of the transaction or a duly certified copy thereof, and, secondarily, in case of its loss, by proof of its previous existence and of its contents. The certificates of other officers referring to it only incidentally and collaterally, although as the basis of their own official action, are not legal proof of the fact itself."

It will be noted, p. 152, Rec., that this Exhibit 12, offered to show the sale of this property, does not even purport to be a full translation of all the proceedings, but it is stated all the proceedings are not fully rendered by translation.

ATTEMPT TO SHOW TITLE IN PENSACOLA CITY CO.

Taking the purported sale under a will to Gregario Caro as a starting point, which sale we contend the papers erroneously admitted into evidence do not prove, there are a number of other documents offered for the purpose of showing a chain of title from Gregario Caro to the Pensacola City Company. These documents we will take up when discussing the relevancy of their admission and show that none of them are admissible in evidence; and also that they could convey no valid title.

It is attempted to show that the Rivas heirs have been enjoined by certain decrees of courts of Florida from collecting rents from this property, which decrees we contend are null and void.

NULL AND VOID DECREES.

In to-wit 1879 the Pensacola City Company, incorporated under the laws of Florida, *et al.* instituted injunction proceedings in the Circuit Court of Escambia County, Florida, to enjoin the Rivas heirs from collecting rents, issues and profits from their (the Rivas heirs') tenants upon the tract of land in question (pp. 57–65, Rec.). That

a decree was rendered in this suit enjoining A. V. Caro, as one of the heirs of Rivas and agent for the other heirs, from collecting the revenues of rent from his tenants upon the tract of land in dispute, and said tenants were ordered to atorn to Judge A. E. Maxwell for rents; but that the said A. A. Caro, as heir and agent for the other heirs, as also the tenants, were none of them dispossessed but still continued to reside upon the land and occupy the houses (pp. 37 and 56 Rec.). That the judge of the Circuit Court of Escambia County, Florida, who presided in the trial and rendered the decree therein, was A. E. Maxwell, and the said A. E. Maxwell was at the time president of the Pensacola City Company, a party complainant to the injunction suit, and was also a brother-in-law of W. H. Davidson (pp. 56–57, 66–75, Rec.) and the brother-in-law of W. E. Anderson (p. 305, Rec.), both parties complainant to the suit. That in 1887 the Pensacola City Company instituted another suit against the Rivas heirs and their tenants, lessees and grantees in the Circuit Court of Escambia County, Florida, resulting in the appointment of one William Fisher as receiver, and a decree—June 17, 1899, for the payment of rental to the said receiver (p. 91, Rec.). That one of the plaintiffs in this suit at whose instance William Fisher was appointed receiver and the tenants on the land ordered and directed to pay rent to him, was C. C. Younge. That the said C. C. Younge besides being a complainant, was the attorney for plaintiffs in this suit. That Jos. F. McClellan, the Judge of the Circuit Court of Escambia County, Florida, before whom the suit was brought and the proceedings had, and who decided the suit and appointed the said William Fisher as receiver, and made the decree above-mentioned, was a brother-in-law of C. C. Younge, one of the complainants (pp. 57, 66, 76, 82, Rec).

That the following is, and was at the time of the pro-

ceedings had before Judges Maxwell and McLellan and the decrees rendered in said proceedings, the statute law of the State of Florida :

" No judge of any court shall sit or preside in any cause to which he is a party, or in which he is interested, or in which he would be excluded from being a juror by reason of interest, consanguinity or affinity to either of the parties, nor shall he entertain any motion in the cause other than to have the same tried by a qualified tribunal."

Art. I, Sec. 967, R. S. of Florida, p. 354, 1892.

" Any and all judgments, decrees and orders except an order for the trial of the cause as hereinbefore provided, made by a judge so disqualified, shall be of no force and validity, and shall be null and void."

Art. I, Sec. 970, R. S. of Florida, p. 354, 1892.

And that the following was the law of Florida relative to the qualification of jurors :

" 2. For Cause. The court shall, on motion of each party in any suit, examine on oath any person who is called as a juror therein to know whether he is related to either party, or has any interest in the cause, or has expressed or formed any opinion, or is sensible of any bias or prejudice therein ; and the party objecting to the juror may introduce any other competent evidence in support of the objection; and if it shall appear to the court that the juror does not stand indifferent to the cause, or is otherwise incompetent, another shall be called and placed in his stead for the trial of that cause."

Sec. 1086, Code of Florida, 1892.

A judge will be disqualified where any blood relative of his wife within the ninth degree, or the husband or wife of such relative is an interested party.

State *v.* Wall, 41. Fla. 463, 467.

parties to the suit; and further, as to the decree rendered by Judge Maxwell, because he was sitting and presiding

in a cause in which he would also have been excluded from being a juror by reason of interest (being president of a complainant company).

The statute law of Florida at the time of these decrees as above set forth, we believe absolutely disqualified Judges Maxwell and McClellan to render the decrees and made the same null and void and no rights accrued to any one under them, because they were sitting and proceeding in causes in which they would have been excluded from being jurors, because of relationship to parties to the suit; and further, as to the decree rendered by Judge Maxwell, because he was sitting and proceeding in a cause in which he would also have been excluded from being a juror by reason of interest, being president of the complainant company.

"The statute declared that 'no judge of any court can sit as such in any cause to which he is a party, or in which he would be excluded from being a juror by reason of consanguinity or affinity to either of the parties,' p. 504, held that 'this statute disqualifies a justice of the peace to sit in a case where a corporation is a party and his brother is a stockholder therein.'"

Place v. *The Butternuts Woolen & Cotton Mfg. Co.* 28 Barb. 507.

"Before the commencement of the trial the defendant asked the justice to dismiss the cause, upon the ground that the justice's brother was a party defendant, being one of the stockholders in the company sued, and offered to prove the facts upon which the motion was based. The justice excluded the offer and overruled the motion. This ruling is sought to be upheld upon two grounds:

1st. That a stockholder in a corporation sued is not a party to the suit, within the meaning of the statute referred to.

"2d. That the offer made was properly rejected upon the ground that no issue was made by the pleadings, involving the jurisdiction of the justice. (P. 507.)

"J. Gray said: 'The decision of the justice in this case was against the interest of his brother; that however does not change the question. His relationship to a party beneficially interested was a legal prohibition of his right to sit. The presumption of bias could not be repelled by his impartial act (*Oakly* v. *Aspinwall*, 3 Const. 547). We are not therefore called upon to determine whether he acted well or ill; the meaning of the statute, says Cowan, justice in *Edwards* v. *Russell* (21 Wend. 64), is not merely that the interests of the parties are unsafe, but the general interest of parties. The points made by both parties show that the want of an issue in the pleadings involving the jurisdiction of the justice was an afterthought and raised now for the first time in the cause, to uphold his ruling in excluding the offer to prove him to be the brother of one of the parties beneficially interested. No issue was necessary, for the reason that his acts were void; and whether the question was raised on the trial or not they could be inquired into collaterally. In *Edwards* v. *Russell* there was no issue involving the relationship; but after issue, as in this case, the objection was raised that the plaintiff and the justice were cousins. No evidence was given, but the justice said it was alleged by the objections that he and the plaintiff were cousins; that such was the general understanding, and gave judgment against the plaintiff for costs.

"This court acted upon what was said by the justice, and held that enough was collectable from the return to warrant the conclusion that the relationship was admitted by him, and affirmed the judgment. In *Post* v. *Black* (5 Denio, 66) nothing was said on the trial touching the alleged relationship, but the affidavit upon which the certiorari was allowed stated the relationship, and the justice in the case, as in duty bound, stated his relationship to the party, and the judgment was reversed. All that is necessary to be known to overturn the judgment in such a case is, that the justice is related to one of the parties, and it matters not how or when it is shown, provided it comes in such shape as to entitle it to credit. No issue was necessary to admit the proof offered (2 Cowan's Treatise, 3d ed. 334). I am therefore of opinion that the judg-

ment of the county court, and that of the justice, should be reversed."

Same case, *Butternuts Woolen and Cotton Mfg. Co.* 28 Barb. 511–512.

That in the above case the judgment of the County Court, as well as that of the justice, was reversed, shows clearly that the affirmation of the null and void judgment by a higher court can not give the judgment any effect.

While it may not appear clearly in this record it does from the case of *Keyser* v. *Davidson et. al.* No. 196, at this term that Judge McClellan's disqualification was not known of or raised at the time he sat in the case. If his decision was null and void it could not be made valid by having been affirmed by the Supreme Court of Florida. The following is the rule laid down by that court as to what it will consider on appeal in a chancery case, and shows that where a question of disqualification of a judge was not raised in the court below the Supreme Court would not consider it.

"That in the appellate court, no party shall be allowed to surprise or mislead his adversary; and if a party in the court below shall purposely suffer a decree or judgment to pass against him, by default, without contesting it there, he shall not be heard in the appellate court, or if counsel shall for the first time raise a point here, which might have been obviated had it been made in the court below, he ought not to be permitted to do so."

So. Life Ins. & Trust Co. et al. v. *Cole*, 4 Fla. 363.

It is not shown that previous to the appointment of William Fisher as receiver under the null and void decree, in to-wit, 1889, of James F. McClellan, Judge of the Circuit Court of Escambia County, Florida, that any of the defendants in error here, either those who pleaded or those who did not, had possession of the lands in ques-

tion or exercised ownership over the same at any time from the grant to Gabriel de Rivas in 1806 up to 1889. The above-mentioned null and void decree of the Circuit Court of Escambia County in 1889 did not vest in the Pensacola City Co. any legal title whatsoever. The defendants in error pleading know this, for they base their title upon deeds of recent date from persons strangers to the title they attempt to set up in the Pensacola City Company; and they offer no evidence of their possession. They are in no position, had the decree of Judge McClellan vested in the Pensacola City Co. a valid title, to set up the same against these plaintiffs in error who have proved actual prior possession. They do not trace title to the Pensacola City Co.

This court in the case of *Christy* v. *Scott*, 14 How. 292, has held—

"that a mere intruder can not enter upon a person actually seized, and eject him, and then question his title, or set up an outstanding title in another. The maxim that the plaintiff must recover on the strength of his own title and not on the weakness of the defendant's is applicable to all actions for the recovery of property. But if the plaintiff had actual prior possession of the land, this is strong enough to enable him to recover it from a mere trespasser who entered without any title."

To the same effect, *Bradshaw* v. *Ashby*, 180 U. S. 59.

"The rule as to rights resulting from prior possession, we think is correctly stated by the Court of Appeals of Virginia, where it holds that where a party in peaceable possession of land is entered upon and ousted by one not having title to, or authority to enter upon the land, the party ousted may recover in ejectment upon his possession only; and his right to recover can not be resisted by showing that there is or may be an outstanding title in another, but only by showing that defendant himself either has title or authority to enter under title. 11 Gratt.

174, in the English cases of *Read & Mospeth* v. *Erington Croke*, E. 1, iz., 321, *Bateman* v. *Allen*, *Ib*, 437, and *Allen* v. *Rivington*, 2 Sands, 111, it was shown that the plaintiff was in possession, and that the defendant entered, without title or authority, and the court held that it was not necessary to decide upon the title of the plaintiff, and gave judgment for him."

Seymour & Simpson v. *Cresswell*, 18 Fla. 40.

"A plaintiff in ejectment can recover against one not showing a better right, or an intruder."

Ashmead v. *Wilson*, 22 Fla. 258, 259.

"That where both parties claim title to land from a common source, the defendant is estopped from setting up an outstanding title with which he is disconnected."

Doyle v. *Wade*, 23 Fla. 98.

"As to an intruder, or trespasser, or to one who does not show a better right, possession of lands, like the possession of personal property, is *prima facie* evidence of title, and will support ejectment."

Dothard v. *Denson*, 72 Ala. 544.

We will now treat of the specific errors assigned.

IV. Refusal of the Judge to Recuse Himself.

This is covered by the first assignment of error.

Previous to the trial in the United States Circuit Court for the Northern District of Florida, as will appear from the Record, pp. 24–26, plaintiffs in error here petitioned the judge of that court to recuse himself, setting out that the wife of the judge had a present and potential interest in the property, and it was expressly stated that it was desired to take the testimony of witnesses in order that any ruling of the court, for or against this formal application, should be of record in this case.

The judge instanter denied this petition, refusing to

first hear testimony, giving from the bench his understanding of the circumstances under which a deed had been made to his wife of part of the property, and by her sent back.

The judge admits (p. 24, Rec.) that a purchase of part of this property was negotiated for in the name of his wife, and that a quit-claim deed was sent and returned, but refuses to allow evidence to be offered to show she is still interested. Would not a natural inference from the statement of the judge be, that with a warranty deed his wife would take the property? If the case before him be finally determined according to the verdict he directed the jury to find, there will be nothing to longer prevent a warranty deed being made. Though his instanter opinion, that therefore "the court thinks that she has not any interest in the property in any way whatever, even if the counsel is right as to the rights of Edgar, in case he should have tendered a warranty deed, which I doubt," is sufficient reason for refusing even to hear evidence from the plaintiffs in error; still after rendering his decision he placed upon file in support thereof an *ex parte* affidavit made the following day (pp. 25–26, Rec.), without opportunity by plaintiffs in error to cross-examine the deponent.

V. Caro *v.* Joudon.

Under this head is discussed the second and third assignments of error.

At the trial the court should not have permitted the defendants to have offered in evidence a record in the suit of *Caro* v. *Joudon et al.* in the Circuit Court of Escambia County, Florida. See pp. 39–51, Rec. It is the record of an action of debt brought in 1869, for watching, taking care of and attending to landed interests in the city of Pensacola, from 1862 to 1865. Neither the re-

cord of the pleadings in the case, nor the evidence taken, shows any reference whatever to the property now in question. There is nothing at all in the suit showing that A. V. Caro recognized in any other parties a title in this property. Furthermore, the suit was not against any of your defendants in error here, or any of the grantors through whom they claim, and had it shown (which it does not) that this land in question was a part of the land for taking care of and attending to which Caro brought suit, that would merely have been evidence tending to show an outstanding title which defendants, as has already been pointed out, could not under the circumstances of this case set up as a defense against the claim of your petitioners. The record for any purpose was irrelevant, and should not have been admitted as evidence.

VI. Purported Abstract of Claim.

Under this head is discussed the fourth assignment of error.

The court further admitted the introduction by defendants, against objection of plaintiffs, of a document stated by counsel to be an abstract of claims, which purported to be in the handwriting of Joseph E. Caro, father of the witness A. V. Caro (p. 44, Rec.; Exhibit 3, pp. 55, 56, Rec.).

This document recites a grant to Gabriel de Rivas in 1806 of the property in question, a sale of the same at public auction to settle the estate of Gabriel de Rivas, October 20, 1817, to Gregario Caro; a sale by Gregario Caro to James Fitzsimmons *et al.* October 12, 1817; a sale of the property by James Fitzsimmons to Cirelo de Morant, as attorney in fact of John Chabeaux, of an undivided one-third part of the land above mentioned, the 22d of November, 1819.

Then it recites conveyances not of this property at all.

Then that Joseph E. Caro set his hand and affixed his seal of office, December 23, 1835, and is signed Joseph E. Caro, Keeper of Public Archives, West Florida. There is nothing on the paper showing that the seal affixed was the seal of office, other than the recital above quoted. It is not shown to be the original or a copy. The court stated (p. 54, Rec.) that it considered the paper admissible to contradict statements of the witness that his father, Jos. E. Caro, had claimed this property for his mother. The document is not identified as being in the handwriting of Jos. E. Caro, further than an admission by the witness for plaintiffs, A. V. Caro, that "it looked like it, with the exception of the spelling" (p. 54, Rec.). There is no evidence offered of the signature of Jos. E. Caro. It is nowhere stated from what custody the document came. There is no file mark, or other writing on the document indicating it had ever been the official record of any transaction, or that it was ever a public document, recorded in any public office. It was produced from private hands.

It is not shown at whose request, in whose interest, or for what purpose this abstract was made. That a public officer certified to the fact of papers being in the office of which he was the custodian, could in nowise and under no circumstances be construed as committing him to endorsing as true the statements that might be found in such papers.

As evidence of the deeds themselves, no extracts or abstracts of the deeds could be admissible in evidence. *Bellamy* v. *Hawkins*, 17 Fla. 757.

VII. Alleged Sale to Gregario Caro.

This is covered by the fifth, the sixth, and down to (12), in the seventh assignments of error.

The papers offered by the defendants to show the will

of Gabriel de Rivas and the administration of his estate under the will, and relied upon to show that in the administration the property in question was sold to Gregario Caro, are to be found pp. 109–119, Rec.

As to the admissibility of any of these papers as evidence: All are offered unaccompanied by any evidence of their being authentic or genuine, and where they purport to be copies, without evidence of the correctness of the copies. All of the preliminary evidence required to entitle the papers to go to the jury for its consideration is wanting. On page 109, Rec. it was agreed by counsel that the Spanish documents, which seemed to have been received in that morning's mail, came from R. L. Scarlet, Surveyor-General of the United States, Keeper of the Archives, and that he was custodian in 1898.

As to the following documents—

1. The will of Gabriel de Rivas (pp. 109–111);
2. The translation of this will (Exhibit 9, pp. 120, 121);
3. The translation of the probate of the will (Exhibit 10, pp. 122–129);
4. The translation of the proceedings to sell a house (not contended to be on the land in question) by Maria Moreno (Exhibit 11, pp. 137–145);
5. Proceedings to sell this particular piece of property (Exhibit 13, pp. 153–186);

Their authenticity and genuineness, or that they ever were an official record of anything, rests absolutely and solely upon the agreement of counsel that they came from R. L. Scarlet, Survor-General, and that he was custodian in 1898; and such of these documents as purport to be translations, whether there is a document in Spanish put in or only the translation, are unaccompanied by any evidence of when, where or by whom they were translated, or that the translation is true and correct.

As to the other documents introduced to establish the

administration proceedings under the alleged will of Gabriel de Rivas—

1. Exhibit 8, pp. 111–119, Rec.;
2. Exhibit 11, pp. 128–136, Rec.,

they are both certified to by R. L. Scarlet, Surveyor-General for the District of Florida, to include and comprise a true and correct tracing of a

"certain quaderno known as a protocol, which is in the Archives in this office, and in my custody as Surveyor-General of the District of Florida,"—

Both certificates bearing date August 26, 1901, and both given under the hand and private seal of R. L. Scarlet. Both documents are in Spanish, and one, Exhibit 8, pp. 111–119, purports to be a copy of the will and probate thereof; and the other, Exhibit 11, pp. 128–136, purports to be a copy of proceedings to sell a house (not contended to be on the property in question) by Maria Moreno.

The rest of the papers offered to show an administration of the estate of Gabriel de Rivas under his will, are:

1. Exhibit 12, pp. 144–153, Rec.
2. Exhibit 14, pp. 186–222, Rec.

Both of these are in English. Exhibit 12 is a translation which purports to be a petition of Maria Moreno, as executrix, for the sale of this particular property in controversy. No paper in Spanish of this document is offered. Exhibit 14 is a translation purporting to be of the proceedings of Maria Moreno to sell this particular piece of property for payment of debts. To each is attached a certificate of F. E. de la Rua, that it is

"a correct translation from the Spanish into English of the original manuscript proceedings now in said Archives (the Spanish Archives of West Florida) in the matter of the sale of land of the estate of Gabriel de Rivas, deceased."

Both are given under the hand and private seal of F. E.

de la Rua, the first, the 29th of July, 1874; the second, the 27th of August, 1887. The correctness of the translation of neither is sworn to.

Exhibit 12 is accompanied by a further certificate by F. E. de la Rua, not as being in charge of the Spanish Archives or Keeper of the Public Archives of West Florida, but as Clerk of the Court of Escambia County, Florida, which certificate purports to be under his hand and official seal May 1, 1884, and the certificate is:

"That the foregoing sixteen pages contain a true and correct copy from Spanish into English from the original manuscript proceedings in Spanish now in the archives of West Florida in the matter of the sale of land of the estate of Gabriel de Rivas, deceased, duly certified by me as Keeper of the Spanish Archives of West Florida, under date of 29th of July, A. D. 1874, on file in case of the *Pensacola City Company* v. *A. V. Caro*, in said Circuit Court of Escambia County, Florida."

The defendants in error attempt to put in evidence what they claim was a will, made in a foreign language and a foreign country, and the proceedings to administer an estate under the same, the date of the occurrences alleged all being before Florida was ceded to the United States by Spain.

Sec. 1110, R. S. of Florida, 1892, provides that to be admissible in evidence the probate of wills must be duly authenticated according to the law of the foreign country where the probate may have been granted. There is absolutely no pretence of compliance with this requirement.

The requirements for proof of the probate of wills in Florida since the same became a State of the Union can have no application, but as it appears that the defendants in offering their evidence attempted to comply with the requirements for proof of domestic proceedings, we will refer briefly to what those requirements are.

To be admissible as domestic proceedings the document offered must be shown to be a copy of the will, letters testamentary or of administration, *recorded in a public office of record in the State*, and certified by the keeper of said record. Sec. 1110 R. S. of Florida.

"Public office of record in the State" doubtless means a State office and would not authorize a certificate from a United States officer, such as a public surveyor, whose records were not records in a State public office. But entirely independently of this, the copy certified would have to be the copy of a *record*, and there is absolutely nothing to show that the papers certified to by either Scarlet or de la Rua are copies of documents *a record* in any public office.

"A deed or any other instrument though actually transcribed upon the public records, is not recorded within the legal acceptance of that word, where there has been no proper proof of its execution, as required by law authorizing a record thereof."

Keech v. *Enriquez*, 28 Fla. 597.

The rule as to the admissibility of evidence of the proceedings before a foreign tribunal, whether the papers offered are in a foreign language or are translations, has been fully set forth by Chief Justice Marshall:

"The paper offered as a true copy from the original proceedings against the *Aurora*, is certified under the seal of his arms by D. Jono de Almeida de Mello de Castro, who states himself to be the Secretary of State for foreign affairs, and the consul certifies the English copy which accompanies it to be a true translation of the Portugese original.

"Foreign judgments are authenticated.

"1. By an exemplification under the great seal;

"2. By a copy proved to be a true copy;

"3. By the certificate of an officer authorized by law, which certificate must itself be properly authenticated.

"These are the usual, and appear to be the most proper, if not the only, modes of verifying foreign judgments. If they be all beyond the reach of the party, other testimony inferior in its nature might be received. But it does not appear that there was any insuperable impediment to the use of either of these modes, and the court can not presume such impediment to have existed. Nor is the certificate which has been obtained an admissible substitute for either of them.

"If it be true that the decrees of the colonies are transmitted to the seat of government, and registered in the Department of State, a certificate of that fact under the great seal, with a copy of the decree in the same manner, would be sufficient *prima facie* evidence of the (verity) of what was so certified; but the certificate offered to the court is under the private seal of the person giving it, which can not be known to this court, and of consequence can authenticate nothing. The paper therefore, purporting to be a sequestration of the *Aurora* and her cargo in Para, ought not to have been laid before the jury.

"Admitting the originals in the Portuguese language to have been authenticated properly, yet there was an error in admitting the translation to have been read on the certificate of the consul. Interpreters are always sworn, and the translation of a consul not on oath can have no greater validity than that of any other respectable man.

"If the court erred in admitting as testimony papers which ought not to have been received, the judgment is of course to be reversed and a new trial awarded. It is urged that there is enough in the record to induce a jury to find a verdict for the defendants, independent of the testimony objected to, and that, in saying what judgment the court below ought to have rendered, a direction to that effect might be given. If this was even true in point of fact, the inference is not correctly drawn."

Church v. *Hubbard*, 2 Cranch, 238.

It will readily be seen that none of the documents asked to be considered as a will and the proceedings thereunder, whether in Spanish or translations into English,

are properly authenticated. Chief Justice Marshall also said:

"To introduce into a cause a copy of any paper, the truth of that copy must be established and sufficient reasons for the non-production of the original must be shown."

Smith v. *Carrington*, 4 Cranch, p. 70.

The defendants in error certainly have not brought themselves within this rule.

The defendants in error would have the court assume that these papers show proceedings selling this property; yet they offer absolutely nothing to show that they are true copies or correct translations of public proceedings had by a Spanish tribunal at the time of the occurrences which the papers recite. They offer nothing to show when, where, or how the papers found their way into what is called the Spanish Archives. The certificate offered by Scarlet refers to no date of filing or recording. There is nothing on the papers to show that they were ever filed or recorded. There is absolutely nothing to show that a public record of the transaction such as these papers refer to, ever existed, unless that is to be assumed (which it can not be) from their coming from the custody of Scarlet. There is no proof offered that the copies are true and correct and there is no properly authenticated certificate of any one to the genuineness of any of the papers. To all intents and purposes these are private documents, coming from private hands.

It will be noted that all these papers bearing upon the alleged administration of the estate of Gabriel de Rivas purport to be either translations or copies, with two exceptions.

1. The purported will, in Spanish, of Gabriel de Rivas, pp. 109–111, Rec.

2. The alleged proceedings, also in Spanish, of Maria

Moreno to sell this particular piece of property for payment of debts and disbursement of proceeds, Exhibit 13, pp. 153–186, Rec.

These papers we suppose counsel offered as originals. It is not entirely clear that they came in the mail from Mr. Scarlet; but whether they did or not, they came from private hands. Papers transmitted from Mr. Scarlet having on them no certificate of any sort and unaccompanied by anything to show when, where, or that they were ever filed or recorded as public documents, can not be assumed to be the will of Gabriel de Rivas and the administration proceedings of Maria Moreno to sell this particular piece of property. This court, referring to an alleged disposition of lands previous to the acquisition of territory from Mexico, said:

"Written documentary evidence, no matter how formal and complete, or how well supported by the testimony of witnesses, will not suffice if it is obtained from private hands, and there is nothing in the public records of the country to show that such evidence ever existed."

Peralta v. *United States*, 3 Wall. 440.

"Neither the grant nor the certificate of approval has been found among the Mexican Archives, nor the record of them upon any book of record. Both papers came from the hands of the claimant. The genuineness of the title depends upon the proof of the official signatures, and some evidence of possession."

United States v. *Valljo*, 22 How. 422.

That the defendants in error offer what they wish to have considered as the original will of Gabriel de Rivas, without evidence of its ever having been filed or recorded or any action taken upon it, certainly to say the least casts well-grounded suspicions upon the validity of the other papers purporting to be copies and translations.

"The non-production of this record evidence of the title, under the circumstances, is calculated to excite well-grounded suspicions as to its validity, and throws upon the claimant the burden of producing the fullest proof of which the party is capable of the genuineness of the grant. We do not say that the absence of the record evidence is of itself necessarily fatal to the proof of the title; but it should be produced, or its absence accounted for to the satisfaction of the court.

"We have already said, that the genuineness of the official signatures to the paper title might be established, and yet the title forged, and stated our reasons. Proof of the genuineness of these alone can never be regarded as satisfactory. It must be carried farther by the claimant. The record proof is, generally speaking, the highest. Possession and occupation of some duration, permanency, and value, are next entitled to weight.

"At least, satisfactory evidence should be required, under the circumstances in which most of these Mexican grants were made, as to make the antedating of any given grant irreconcilable with the proof; otherwise there can be no protection against imposition and fraud in these cases."

United States v. *Teschmaker*, 22 How. 392–406.

All these papers were admitted as evidence without first requiring any evidence of their antiquity or of their genuineness. There is no evidence offered of the execution of the will. In fact, it does not purport to be signed by Gabriel de Rivas. It is not a valid will on its face.

"The rule embraces no instrument which is not valid upon its face, and which does not contain every essential requirement of law under which it was made. Neither the deed nor the will comes within the rule, and we think the court very properly excluded them both from the jury."

Meegan v. *Boyle*, 19 How. 149.

In the same case this court said:

"By the Spanish law, a will was required to be proved

by the attesting witnesses, within one month after the decease of the testator; and, when proved, it is required to be recorded. 1 White's Recop. 111; 2 Morgan & Carlton's Partidas, 975–977."

Meegan v. *Boyle*, 19 How. p. 149.

There is no evidence offered to show where or when these documents were found, or of possession under any of them by alleged grantees. There is no evidence offered to free the papers from the just ground of suspicion under which they fall; yet under the decisions of this court there should be such proof preliminary to their admission into evidence.

Applegate v. *Lexington & Carter Cp. Mining Co.* 117 U. S. 255.

Barr v. *Gratz*, 4 Wheat. 213.

Winn v. *Patterson*, 9 Pet. 663.

Stoddard v. *Chambers*, 2 How. 284.

These papers are offered unaccompanied by evidence of authenticity, genuineness, possession under the alleged sale, or that they had been in existence for more than thirty years. Lack of evidence of their age shows they do not come before the court free from a just suspicion of fraud, a suspicion augmented by evidence found in the record. In the answer to the bill of complaint in the Circuit Court of Escambia County, Florida, in proceedings being held there before Judge Maxwell, made by the Pensacola City Company and offered by plaintiffs (p. 77, Rec.), it appears that these papers were not known to exist until after 1872—less than thirty years ago; and an examination of the testimony of Colonel A. C. Blount, a witness for the defendants (p. 302, Rec.), shows that just preceding the time they were first brought to light there was a very loose supervision of the papers styled the Spanish Record, or Archives, and that during the war

they were more under the personal than official supervision of Mr. de la Rua, and he took these papers off with him from Pensacola. It further appears from Colonel Blount's testimony (p. 302, Rec.) that Mr. Brainard had access to these archives at all times.

Now Mr. Brainard was agent of the Pensacola City Company (p. 47, Rec.), and there was every opportunity, just previous to the time the existence of these documents is first heard of, for them to have found their way amongst the regularly recorded Spanish papers. Papers properly belonging to those archives, like the grant of Gabriel de Rivas, accepted as the origin of title by both plaintiffs in error and defendants in error, had been filed and recorded when the transactions to which they refer occurred, as is shown by entries made at the time. There is every difference between the status of such a grant and of papers such as are here offered, which found their way into the Spanish Archives without any evidence of whence, when, or how they came, were never recorded or filed there, and whose very existence was not known of until after a suit against the Pensacola City Company, wherein evidence of this character would be useful. The latter papers came to light under circumstances to excite well-grounded suspicions, and to throw upon defendants the burden of proving, to the fullest extent, their authenticity and genuineness; yet defendants meet this responsibility by offering the papers, unaccompanied by evidence of their authenticity or genuineness, or of their having existed for such time as to entitle them to be considered as ancient documents.*

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*Attached as Appendix A to the brief filed with the petition for certiorari in this case, No. 449, Oct. term, 1903, is a brief upon the validity of the alleged will of Gabriel de Rivas and the proceedings for the opening thereof, prepared by Messrs. Runcie, Portuondo & Lamar, counsellors at law, Havana, Cuba.

VIII. Exhibits 15 to 20.

The 6th assignment of error (12) to (15) and last of the 7th assignment cover these.

Exhibits 15 to 20 (pp. 222–233, Rec.) are offered as evidence that the Commission appointed by act of Congress for ascertaining claims and titles to lands in West Florida and for other purposes, confirmed to one John Chabeaux the land in question, and farther on in the record, by exhibits which will be discussed later, it is attempted to show that John Chabeaux derived title through Gregario Caro, alleged to have purchased at an administration sale of the estate of Gabriel de Rivas.

The first, Exhibit 15, purports to be a translation from p. 425 of Book A, of the proceedings of the Commissioners of Land Claims in the West District of Florida, and as will be seen (p. 225, Rec.) is certified to April 25, 1879, by F. E. de la Rua as Keeper of the Archives of West Florida, and translator, under his hand and private seal, as

"a true copy of a translation heretofore made by me."

The former translation of which this purports to be a copy is not offered in evidence. The original document in Spanish, from which the former translation was made, is not offered in evidence, its absence is nowhere accounted for, and there is nothing to show that the former translation, of which the paper here offered is only a copy, or the original in Spanish that was translated, was ever a public document, nor is there anything to show that the copy of the copy, the only thing offered in evidence, was ever a public document in any public archive; and there is no evidence offered to show it to be a true copy.

The purported proceedings before the Commissioners for the Settlement of Land Claims in West Florida, Exhibit 16, Book A, pp. 332, 333, see pp. 225–228 of this Record,

most of which Exhibit is in Spanish, is not shown to be an original document, is not certified to by any official, is not given under any seal or register, and has nothing connected with it to show it is a true copy of Book A, pp. 332, 333.

Exhibit 17, purporting to be from pp. 332 and 333, Book A, Proceedings of Board of Commissioners, pp. 228–230, Rec. and Exhibit 18, p. 230, Rec. purporting to be a certificate from Joseph E. Caro, Keeper of Public Archives, West Florida, December 23, 1835, of the description of the courses and distances contained in Plat A, both being in English, are neither of them public documents, nor certified to as true and correct copies of public documents. Neither are under seal. Exhibits 16 and 17 both purport to come from pp. 332, 333, Book A, yet they are different documents and too long both to be found between those pages.

These Purported proceedings before Commissioners for the settlement of Land Claims in the West District of Florida, Exhibits 15–18 inclusive, recite the presentation of the claim of John Clabeaux to 300 arpens of land; and defendants follow their production by offering Exhibit 19, p. 231, Rec. purporting to be p. 103, No. 46 of American Papers of State, and which is as follows:

"No. 4. By whom claimed: John Chabeaux. Original grantee, Gabriel de Rivas. Nature of Claim: Grant. Date of Cl.: November, 1806. Number of arpens, 300. Where situated: Bayou Texar. By whom issued, Intendent Mereles. When surveyed: 2d October, 1806. By whom surveyed: Vincenti P. Pintado, from 1806–1810."*

Respondents then offer in evidence as Exhibit 20, pp. 231–233, an Act of Congress entitled—

* This we presume was offered to show the findings of the commission and it does not very properly show a confirmation of anything to John Chabeaux, the commission being without authority to do more than determine whether the United States had any claim.

"An Act to confirm the reports of the Commissioners for ascertaining claims and titles to lands in West Florida, and for other purposes,"

which act expressly recites at the close of section 7 (p. 233, 234, Rec.):

"*And provided also:* That the confirmation of all the said claims provided for by this act, shall amount only to the relinquishment forever, on the part of the United States, of any claim whatsoever to the tract of land so confirmed or granted."

These are all the papers offered bearing upon the proceedings before the Commissioners for ascertaining claims and titles to lands in West Florida.

IX. Exhibits 21 and 22.

(17) and (18) of the 6th assignment of error cover this.

Exhibit 21 (pp. 233–235, Rec.) and Exhibit 22 (pp. 235, 236, 237, 238, Rec.) are said to be respectively:

1. "A certified copy of a translation of a deed from Gregario Caro, certified by Felo de la Rua, Keeper of the Public Archives of West Florida, to James Fitzsimmons, Samuel Smythe and John Chabeaux, for said tract of land."
2. "A certified copy of deed from James Fitzsimmons to John Chabeaux" for the same tract of land (pp. 233–235, Rec.).

Both have attached a certificate purporting to be under the hand and private seal of F. E. de la Rua, Keeper of the Public Archives, West Florida, and under date of May 16, 1885.

The first, that it is—

"a true copy of a deed from Book B of Deeds, p. 90, and of the proceedings before a United States Commissioner,

from 1st Vol. p. 322, as the same remains of record in my office."

and the second, that it is—

"a true and correct copy of the deed between the parties therein named, as the same remains of record in my office, in Public Archives, Book B, pp. 278, 279."

The first bears date October 22, 1817; the second, November 22, 1819—both dates previous to the cession of Florida, to the United States, yet both are in English. The originals are not produced, or their absence accounted for. No evidence is offered of any such deeds ever having been filed, or of the dates they were recorded. There is no evidence offered of their authenticity or genuineness. The property is described as containing 300 arpens *superficies*, situate at one mile from the town in the plaza known by the name of the Old Brick-Yard, and which is referred to as the tract of land that Gregario Caro purchased from the estate of the late Gabriel de Rivas, deceased, on the 21st instant and (see p. 233, Rec.) varies materially from the description found in the original grant to Gabriel de Rivas (see p. 31, Rec.), where the property was described as—

"situate more or less at a quarter of a mile of English terras, trial measurement, from the mouth of the rivulet of the Marsh, between the n. n. e. and n. e. by n., which rivulet is the extreme east of this population according to the plat thereof."

And this is the only description found anywhere of the land it is attempted to show that Gregario Caro purchased at the administration sale.

As to Exhibit 21, it is stated by counsel for defense (p. 233) to be only the certified copy of a translation. Exhibit 21 does not come within the rule as to the copy of

a copy laid down by Mr. Justice Story (*Winn* v. *Patterson*, 9 Peters, 677). The copy of a copy is not shown to have been made in such way as to really make it a second copy, which is what the rule requires.

What has been said relative to proving a copy and the certificate required from an officer authorized by law to make such certificate, and the proper authentication of such certificate, applies to these exhibits.

X. Exhibit 24.

(20) of the 6th assignment of error covers this.

Exhibit 24 (pp. 237–298), the first page and a quarter in English, the remainder in Spanish, of which a translation ordered by the Circuit Court of Appeals will be found pp. 396–454, has no reference whatever to any property in dispute in this case. The explanation of why it was offered is made by defendants' counsel (pp. 236, 237), as follows:

"I offer in connection with the others, the protocol, which I have in my hand, and I will give the names of the beneficiaries: one, Thomas Marshall, and the other is John Chebeaux; I offer it for the purpose of showing the authenticity of the proceedings relating to this particular tract of land, because found at the same place, signed in part by the same parties, and having the same general appearance."

There is no certificate to this paper. There is no evidence as to where it was found; and as to the statement of counsel, that it was found at the same place as the proceedings relating to the particular tract of land, there is not one particle of evidence as to when, by whom, or at what place those purported proceedings were found, save in the answer to the bill of complaint in the Circuit Court of Escambia County, Fla. (pp. 77, 78, Rec.).

The remaining exhibits we will take up in accordance

with the sequence of dates of the instruments, rather than by the number of the exhibit. They are all (as are the exhibits that have preceded them, commencing with No. 18) introduced to establish a chain of title to the Pensacola City Company, and there is no evidence offered to connect any of the defendants in this suit as deriving title from the Pensacola City Company, or from any of the parties through whom the title is attempted to be traced to that company.

XI. Exhibit 27.

(19) of the 6th assignment of error covers this.

Exhibit 27, offered in evidence (p. 236) and set forth (pp. 310–312, Rec.), purporting to be a certified copy of the partition between John Chebcaux, Louis de Conde Norant and Lorenz Millaudon, is a document in English, under date of October 1, 1818. It is certified to by A. E. de la Rua, keeper of Public Archives, West Florida, under his private seal (his official seal being lost or misplaced), May 16, 1885, as a

"true and correct copy of the deed of partition between tne parties therein, as the same remains of record in my office, Public Archives, Book of Deeds B, pp. 229, 230."

The date of this purported deed is 1818. It is in English, and there is nothing to indicate where it was filed or that it was ever a public document in the custody of a public official. It is subject to all the objections that have hitherto been cited to Exhibit 22.

XII. Evidence of Payment of Taxes.

This is covered by the 8th and 9th assignments of error.

It was a palpable error to have permitted William Fisher and W. A. Blount to testify that the Pensacola City Company and one Brainard respectively, had paid

taxes on this property, the tax receipts being the best evidence of who had paid taxes, and no other evidence being admissible without first requiring the non-production of such receipts to be properly accounted for.

XIII. Documents Offered to Try and Trace Title to the Pensacola City Company.

The exhibits now to be referred to all purport to have been made since Florida was admitted into the Union, and as each fails in some particular to meet the requirements of the statutes of Florida as to the admissibility of such testimony, we will state those requirements at the outset.

REQUIREMENTS TO PROVE CONVEYANCES IN FLORIDA.

The statutes of the State of Florida make deeds and mortgages, duly recorded, *prima facie* evidence in the courts of the State, without proof of execution; and also certified copies of the record of deeds and mortgages that have been duly recorded shall be admitted as *prima facie* evidence thereof, and of their due execution with like effect as the originals, when duly proved; provided it is made to appear that the originals are not within the custody or control of the party offering such certified copies. Sec. 21, Article 16, Statutes of Florida.

The Supreme Court of Florida, however, has said construing this section:

"But the constitution has not made the original record itself, without any other showing, evidence of deeds or mortgages."

Johnson v. *Drew*, 34 Fla. 130.

Since 1828 it has been required to record deeds to make them good as against subsequent purchasers for valuable consideration. Sec. 1972, p. 653, Revised Statutes of Florida.

In order to entitle the conveyance to record its execution must be acknowledged by the party executing the same, or the execution thereof by the said party proved by a subscribing witness thereto, before the officer and in the form and manner provided. Sec. 1973, p. 654, Revised Statutes of Florida.

The statute putting into effect the constitutional provision heretofore quoted will be found Section 1110 Revised Statutes of Florida, 1892.

The Supreme Court of Florida has said:

"The result is that under our statute a certified copy of a proved deed, duly recorded, may be received as evidence only where the original is duly proved to have been executed or as secondary evidence. Until the legislature shall declare that the certificate of the officer taking an acknowledgment shall be deemed sufficient proof of due execution otherwise than for the purpose of record, we can not change the rule of evidence."

Skinner v. *Pinney*, 19 Fla. 48.

"A certificate transcribed from a record of an instrument which has been spread thereon, without any such proof or acknowledgment of its execution as is necessary to admit it to record, is not admissible in evidence. The transcript of a paper upon a record under such circumstances is a nullity and of no effect."

Parker, Holmes & Co. v. *Cleveland*, 37 Fla. 39.

"The act of 1846, Ch. 81, Sec. 1, Thompson's Digest, 343, refers only to such instruments as are duly proved before the recording officer, or some judicial officer, and recorded in compliance with law."

Sanders v. *Peepon*, 4 Fla. 465.

Where a deed failed to show that the grantor ever acknowledged, or other subscribing witnesses ever proved the execution of the original deed, the court said:

"A certified copy of the record of the deed is not admis-

sible in evidence as proof of the execution or contents of the original, if the record has not been made upon the evidence of execution required by statute."

Kendrick v. *Latham*, 25 Fla. 819.

Statute (McClellan's Digest, Sec. 6, p. 215) provided that conveyances shall be recorded, and in order to procure recording the execution thereof must be acknowledged by the party making the same, or proved upon oath by at least one of the subscribing witnesses before the officer authorized by law to record the same, held:

"That where a deed was recorded the day it bears date and admitted to record without being acknowledged by the clerk before any officer authorized to take such acknowledgment, that the record was a nullity."

Townsend, admr., v. *Edwards*, 25 Fla. 584.

XIV. Exhibit 31.

Exhibit 31 (pp. 317–319, Rec.) purports to be a sheriff's deed made by James E. Exum to John Brosnahan and Henry Michalet, and recites that it was to satisfy a judgment against John Chabeaux, deceased, for $1,243.60, and that it conveys a five undivided one-eighteenth part of the tract of land, 300 arpens, fronting the Bay of Pensacola and Bayou Texar, about one mile from the city of Pensacola, for a consideration of $80. It is dated the 6th of January, 1834, is unaccompanied by any evidence of the validity of the judgment and execution, and shows that the purported sale was null and void, as the Sheriff was acting upon a void process which could confer no right on him to sell, because the deed on its face recites that the judgment was obtained against John Chabeaux, deceased. There is no attempt to show any possession under the deed. It is certified to as a copy under the hand and seal of the Clerk of the Circuit Court, but neither the date of the filing nor recording of the original

is shown. This court in a case that came from Florida, said:

"The solution of one question presented by the record is decisive of this case. Does the writ of *fieri facies* tested after the death of the party against whom the judgment is rendered, confer power on the ministerial officer to execute it? * * * It is a well-settled principle of law which has often received the sanction of this court, that the decree or judgment of the court having jurisdiction is binding until reversed, and can not be collaterally attacked. But the defect in this case occurs in the judgment, and is fatal to Mitchell's title, for the purchasers on a judicial sale are not protected, if the execution on which the sale was made was void. A void process confers no right on the officer to sell, and all acts done under it are absolutely null.

"The writ of *fieri facies* on which Mitchell rests his title was tested after the death of St. Maxent, and, according to a familiar rule of the land law, it was therefore void. The death of a defendant, before the test of an execution, compels the plaintiff to sue out a writ of *fieri facies*, for the alteration of the person 'alterates the process.' *Bac Abr. Tit. Fieri Facies.*"

Mitchell v. *St. Maxent*, 4 Wall. 237.

Before a sheriff's deed is admissible in evidence for the purpose of proving title thereunder, a valid judgment and execution must be shown.

McGeehe v. *Wilkins*, 31 Fla. 83.
Davis v. *Sheles*, 14 Fla. 43.
Donald v. *McHinnon*, 17 Fla. 746.
Kendrick v. *Latham*, 25 Fla. 918.

XV. Exhibit 28.

Exhibit 28, pp. 312–314, Rec. purports to be a conveyance by Juan Brosnham and wife and Henry Mitchelet and wife, of this same property acquired by the null and void sheriff's deed to Walter Gregory; the consid-

eration received being $1,200 dated November 6, 1834, it could pass no title, the deed under which the grantor held, made in January of the same year, having been null and void. It is certified to as a true and correct copy by the clerk of the Circuit Court in 1887, but not under seal. There is no date of filing given, but the date of record is put down as October 25, 1835.

XVI. Exhibit 29.

Exhibit 29 (pp. 314, 315, Rec.) purports to be a conveyance by Lorente Millaudon and wife to William H. Chase, of a four undivided one-eighteenth interest in a piece of land lying, situate and being on the Bay of Pensacola, and within the corporate limits of Pensacola, known as the Rivas tract, the consideration cited being $31,800, under date of the 23d of January, 1837.

The clerk of the court of Escambia County, Florida, certifies to this being a correct copy of the deed remaining of record in his office in Book B of Deeds, p. 242, and of date of record February 14, 1837. This certificate is given in 1887, is not under seal and there is no date of the filing of the document. The grantors to this deed are citizens of New Orleans. There is no evidence that they ever acquired title from any source whatever, and it is incredible that Wiliam H. Chase ever paid to strangers, citizens of New Orleans, $31,800 for such an indefinite purchase. This court has said in the case of *Maxwell Land Grant Co.* v. *Dawson*, 151 U. S. 600:

"It is incredible that any man should have paid $3,700 for such an indefinite purchase of real estate."

Such purchases certainly did not vest in Gregory and Chase a valid title they could pass to the Pensacola City Company Association by the articles of agreement set out under Exhibit 21 (pp. 319–334, Rec.), and which that

association could transfer to the Peusacola City Company, under the indenture by which that corporation acquired the property of the Pensacola City Company Association (Exhibit 32, pp. 335–338, Rec.).

XVII. Exhibit 30.

Exhibit 30 (pp. 316, 317, Rec.) also purports to be a sheriff's deed conveying to Walter Gregory three undivided one-eighteenth interest in 300 arpens called the Rivas land, consideration $3,376, date February, 1835. It is acknowledged before the clerk without seal; was never recorded. The deed purports to have been made to satisfy a decree in chancery against the unknown heirs of Louis Donquemenil de Morant. Such being the case it could not avail to pass title, even had a confirmation of the sale been shown, and none was shown.

"But it is apprehended the record of the proceedings against the unknown heirs, etc., is no evidence that any such heirs existed, and that the decree and deed, made in pursuance of it, can not avail to pass any title to the complainant, without some evidence that John Aben Hamlin left heirs upon whom his estate descended, and from whom it could pass by the commissioner's deed to the plaintiff."

Hollingsworth v. *Barbour*, 4 Pet. 477.

"The confirmation of the sale by the order of the court did not cure the invalidity of the execution upon which it was made. The extension of the judgment against Young, so as to embrace the sureties, being a void proceeding, no subsequent action upon the sale could give it validity. A confirmation of a sale may cure mere irregularities not affecting its fairness, but not an infirmity growing out of the nullity of the judgment under which it was had."

Lamaster v. *Keeler*, 123 U. S. 391.

XVIII. Exhibits 31 and 32.

Exhibit 31 (pp. 319–334, Rec.), purports to be the deeds of a merger under date of January 13, 1837, of all the lands taken in the name of Walter Gregory and W. H. Chase, in trust for the Pensacola Land Company, organized December 8, 1835, into the Pensacola City Company, an association. Exhibit 32 (pp. 335–338, Rec.), purporting to be a deed of May 8, 1870—some 43 years afterwards—whereby the Pensacola City Company, a corporation, acquires all the property of the Pensacola City Co. a joint stock association, are both unaccompanied by any evidence of their authenticity or genuineness or of their ever having been recorded; and they contain no description of the Rivas tract of land, or mention of that tract, beyond what appears in Exhibit 31, on pages 321–322, Rec., which recites:

"And whereas since the execution of the said articles of agreement, it has been discovered that Samuel Millaudon, of New Orleans, owned four eighteenth undividad parts, more or less, of one of the tracts of land conveyed by the said Walter Gregory to the said William H. Chase in trust for the Pensacola Land Co., aforesaid, known as the 'Rivas tract,' and whereas the said W. H. Chase, as trustee of the said Pensacola Land Co. has purchased the interest of the said Millaudon for the sum of thirty-one thousand and eight hundred dollars, and has drawn his bill of exchange on the original shareholders, in the said Land Co. in proportion to their respective interests, payable on the 1st day of April next."

There is no evidence of title from Samuel Millaudon, or evidence that Samuel Millaudon ever claimed any title to the Rivas land.

The defendants introduced a map made by George E. Chase, for the Pensacola Land Co., 1835–1836, and they claim this particular land was laid off in streets, lots and

blocks, and the schedule, beginning on p. 328 of the record, shows the nature of their claim and the lots and blocks according to this map.

If the language of this agreement is to be taken as true it shows that this map was made before they had pretended to acquire title to the land the map covers.

There is no evidence in the record that this Pensacola City Co., an association organized January 13, 1837, ever exercised or claimed ownership (even if had its map, made in 1835–1836) covering the Rivas property, if the testimony of William Fisher and W. A. Blount, relative to the payment of taxes, already alluded to, was admissible.

"The payment of taxes, surveying and mapping the lands and executing a mortgage covering them, do not constitute prior possession."

Seymour & Simpson, appellants, v. *Cresswell et al.* 18 Fla. 29.

If the company ever asserted title to the Rivas tract it seems to have been prompted to abandon its claim to the land (which was covered by the map of George E. Chase for the Pensacola City Co. Association) for the term of 43 years, the company going out of existence without asserting any right or title.

Dr. G. O. Brosnham (pp. 66, 67, Rec.) states that he was agent for the Pensacola Land Association from the year 1871 up to six or eight years ago, and his language is:

"I never heard of the Pensacola Land Association claiming the Rivas tract, not to my knowledge."

Another strong corroborative fact of the abandonment of this claim is, that though the property was mapped in lots and blocks in 1835–1836, the conveyance from the Pensacola City Co., an association, to the Pensacola

City Co., a corporation, in 1870, described its boundaries in section and township, according to U. S. Survey, making no mention of lots and blocks and grants; and the Pensacola City Co., a corporation, employed Lee & Harding to make a map for them in 1873. Mr. Brainard, who had been agent of the Pensacola City Co., says nothing in his evidence (pp. 47, 48, Rec.) about claim of ownership or of possession of this property by the Pensacola City Company.

XIX. Judge's Instructions.

If the contention we have been making is correct, and the numerous papers already referred to admitted in evidence against plaintiffs in error's objection were inadmissible, then the instruction, that had as a basis these documents, was an error, and the relief here asked should be granted. But independently of the admissibility of the evidence objected to by plaintiffs in error, we further contend that had such evidence been admissible it presented questions of fact, and that evidence offered and not objected to also presented questions of fact peculiarly within the province of the jury to pass upon, and that the court invaded that province when it instructed the jury to decide for the defendants and had the clerk write out the verdict and deliver it to the foreman of the jury.

We give here the reasons assigned by the judge for taking the case from the jury:

"'Now, the motion here is to take from the jury the consideration of this case, because there are no facts for them to pass upon and that the facts are of such a character and of such consequence as would not give the privilege of finding a verdict for the plaintiffs, and that if they should find a verdict for the plaintiff the court should set aside the verdict because of the sparseness of the facts, and where it is the case the court does not hes-

itate, and has not several times, to give such instructions in certain cases.

"'The plaintiffs' counsel here has seen fit to oppose it in this case and the plaintiffs contend that there are certain facts which the jury should pass upon; first in regard to the accurateness of the records that have been produced here and their force and validity and authenticity and so on, and second: whether Mr. Fisher held adverse possession to this property since his appointment as receiver; since the decree of Judge of the Circuit Court by Judge McLellan.

"'As to the first division of that argument I understand the counsel to make charges as to the validity of these documents, beginning with the will and the proceedings that took place at the sale of the property, the protocol, the witnesses thereto, and the absence of certain signatures.

"'As I understand the plaintiffs' case, they have made it their purpose to ask the court to allow the jury at this date to decide and for the court to give the jury the law as to what ought to carry, and then tell the jury whether or not the Spanish officers who prepared these papers, upon the proofs of title to this property, and to tell the jury whether or not the facts existed that makes these papers at time valid or not. The ruling of the court on this matter will cover all of this ground.

"'The court, as I stated yesterday, is of the opinion, and when papers come from the proper custody, and they appear to have been in this custody, and are regular upon their face and they are both in this case, as the evidence produced tended to show, that they were treated as valid papers by the officers at that time, and by all subsequent officers that came in charge or possession of them; that these papers, the court will not presume and will not permit a jury to presume, that there were any error therein committed by the officers at that time, which rendered them invalid, null and void, as to the distinct interests long since acquired thereunder.

"'In other words, the court understands the request of the plaintiffs' counsel to amount to this: that the jury

is to be asked to pass upon the validity in law, of these ancient papers.

"'As to the adverse possession of Mr. Fisher from the time of the decree of Judge McLellan to the present time, the court does not at this moment recall any testimony of such force and character that should go to the jury and permit them to determine that Mr. Fisher has not been in adverse possession of this property under that decree of Judge McLellan.

"'That being the idea the court takes of the case, it would not, in the opinion of the court, be right to submit the case to the jury and let them find for the plaintiffs, if they should do so, and then immediately set the verdict aside under the view the court takes of the law; that is what I would be compelled to do.

"'It is best for both sides in this case for the court to make its ruling now, and direct the jury and give them the full opportunity of saying anything in law that can be said on all the papers at once, without waiting for further trial.'

"And the said plaintiffs by their counsel did then and there except to the ruling of said court.

"And this constitutes plaintiffs' 23rd exception.

"And the said judge did then and there while the jury was at the bar, give instructions to the said jury, in words and figures as follows:

"'At the request of the counsel, I repeat what I have said about being interested in this case or any land in connection therewith:

"'I never had any interest in this tract or any part of it; no relative or member of my family ever had or has any interest directly or indirectly, in any part of the tract. The facts in connection therewith have been signed under and are filed.

"'Mr. Hooten, a member of the firm of Messrs. Watson & Co., has filed an affidavit the other day, setting (forth) the facts.

"'Gentlemen of the jury: After a thorough discussion of the law in this case by the counsel, the court is of the opinion that the plaintiffs have no ground upon which to recover. That being the case, if the case had been

left to you to determine and you had found a verdict for the plaintiffs, the court would have been compelled to set that verdict aside immediately; a new trial would have followed, and all of the same matters gone over again.

"'The course I am about to take to terminate the trial in this court at present and enable the plaintiffs at once to take their appeal to the Court of Appeals and any determination made upon it as that court may think best; therefore I will instruct you, and you will find your verdict in accordance therewith, and you will find your verdict for the defendants in this case.'

"And the said plaintiffs by their counsel did then (and) there except to the instructions and directions by the said court to the said jury.

"And this constitutes plaintiffs' 24th exception.

"And the said judge did then and there further give instructions to said jury, in words and figures as follows:

"'Juries are to pass upon questions of fact; the court is of opinion that the questions that have been brought up are questions of law, and those questions of law are always for the court and not for a jury.

"'Juries are not supposed to know what makes the legality of regularity of papers; of adverse possession and I know of no facts in this case, in my opinion, to submit to a jury.

"'The court in giving the jury the verdict it gives relieves the jury of any responsibility, and you will give your verdict in accordance and under the direction of the court.'

"And the said plaintiffs by their counsel did then except to the instruction and directions of the said court.

"And this constitutes plaintiffs' 25th exception.

"Whereupon the clerk of the said court writes out the verdict, presents it to the jury, for the signature of its foreman; which verdict is in words and figures as follows:

"'We, the jury, find for the defendents.

"'W. B. FERRIS, *Foreman.*'

"And the said plaintiffs by their counsel did then and there except, while the jury was still at the bar.

"And this constitutes plaintiffs' 26th exception." (Pp. 375–383, Rec.)

Each of the following decisions applies with force to this particular case and shows with what jealous care this court has always protected the right of trial by jury:

"The first prayer of the defendants, in the Circuit Court, being to instruct the jury that, upon the whole evidence, the plaintiff ought not to recover; if it might properly have been granted in any case, in which any testimony was offered, certainly ought not to have been granted if any possible construction of that testimony would support the action."

The Bank of Washington v. *Triplett & Neale*, 1 Pet. 31.

"It is insisted, with much ingenuity, that in this case there was no disputed fact for the jury to pass upon, and that the only issue in the case being one of law, it was proper for the court to dispose of it. If this were so, the instruction of the court might be sustained, provided the undisputed facts necessary to sustain the verdict had been submitted to the jury. * * * The judge also tells us that 'there is very little discrepancy, in the testimony.' But where there is any discrepancy, however slight, the court must submit the matter to which it relates to the jury, because it is their province to weigh and balance the testimony and not the courts."

Barney v. *Schneider*, 76 U. S. 254.

"While it is correct practice for the judge to instruct the jury in an absolute form on admitted facts, he is not authorized to take from the jury the right of weighing evidence where the facts are controverted."

Mutual Life Ins. Co. v. *Snyder*, 93 U. S. 396.

"But independent of this ground, which would be conclusive, there is another which seems equally so; and that is, that it called upon the court to decide upon the nature and effect of the whole evidence introduced in support of the plaintiff's case, part of which was necessarily of a presumptive nature, and capable of being urged with more or less effect to the jury."

The court through Mr. Justice Story, after discussing the evidence says:

"Under such circumstances, if no other objection existed to the title, the lapse of time would alone be sufficient to justify a presumption of its due execution and loss, and nonproduction by the plaintiff, proper to be left to the jury; and thus justify the court in refusing a nonsuit."

Crane v. *The Lessee of Morris et al.* 6 Peters, 610.

By Mr. Justice Harlan:

"Where a cause fairly depends upon the effect or weight of testimony, it is one for the consideration and determination of the jury, under proper directions as to the principles of law involved. It should never be withdrawn from them, unless the testimony be of such a conclusive character as to compel the court, in the exercise of a sound judicial discretion, to set aside a verdict returned in opposition to it."

Phœnix Mut. Life Ins. Co. v. *Doster*, 106 U. S. 30–38.

"Such direction can be properly given only when the state of the evidence is such as to leave no room for doubt that it is the duty of the jury to find accordingly. This case was certainly not within that category."

98 U. S. 582.

The court in taking the case away from the jury after quoting with approval the motion of defendants in error shows that it was not proceeding upon the idea that there were no facts before the jury, but, as stated—

"that the facts are of such character and such consequence as would not give the privilege of finding a verdict for the plaintiff" (p. 380, Rec.).

As to the character and consequence of the facts, we are constrained to differ with the court. The court also states as a reason for taking the case from the jury:

"The court does not at this moment recall any testi-

mony of such force and character that should go to the jury and permit them to determine that Mr. Fisher had not been in adverse possession of this property, under the decree of Judge McLellan " (p. 381, Rec.).

The reason given shows that the court labored under a misapprehension both of the law and the facts. If Fisher ever took possession as receiver, which is not clearly shown, he was acting for the benefit of all parties concerned, to protect and preserve the property, and would not hold adversely to plaintiffs in error here, the Rivas heirs being parties to the suit to which he was appointed.

The litigation resulting in the appointment of Fisher as receiver has not yet terminated. Judge McLellan's decision was appealed from to the Supreme Court of Florida. *Wilkins* v. *Davidson*, 36 Fla. 36. A petition to the Florida courts to set aside this decree has been denied by the Supreme Court of Florida and the case is now before this court by a writ of error, Case No. 196. No statute of limitations has run and such statute is not pleaded in this case. There is in evidence (pp. 88–91, Rec.) the order of Judge McLellan appointing Fisher as receiver, but whether Fisher took possession under that order is another question and one of fact. The testimony of Fisher relative to taking possession under his appointment as receiver to say the least is most vague and indefinite. He says (p. 87, Rec.) that he has been receiver since 1887, and yet that he does not know when he went into possession. That he has never seen any of the books or papers of the Pensacola City Company and does not think they owned any of it (presumably referring to this land) at the time he was appointed receiver. The Pensacola City Co. was a thing of the past. Furthermore, he is one of the defendants in error here, and he does not set up possession under the receivership, but as

has already been shown in this brief, traces title in himself by deeds of recent date from strangers to the title, and offers no evidence of possession under those deeds. Even if Fisher's possession as receiver could be adverse to plaintiffs in error, whether he took possession under the order of Judge McLellan would be a collateral fact *in pais*, an extrinsic circumstance, and the inference to be drawn therefrom should have been left to the jury.

"Although it is the true province of the court to construe written instruments, yet, where the effect of such instruments depends, not merely on the construction and meaning of the instrument, but upon collateral facts *in pais*, and extrinsic circumstances, the inferences of fact to be drawn from them are to be left to the jury."

Syllabus to *Etting* v. *The Bank of the United States*, 11 Wheat. 60.

Whether possession is or is not adverse in any particular case is a question of fact for the jury.

Hogan v. *Kurtz*, 94 U. S. 773.

Bradstreet v. *Huntington*, 5 Peters, 402.

Whether possession is continuing is also a question to be decided by the jury under proper instructions from the court.

Cook v. *Burnly*, 11 Wall. 659.

Furthermore, all defendants in error who make any defense offered like Fisher, deeds of recent date and offered no evidence of possession under those deeds. None of defendants in error claim through Fisher as receiver for the Pensacola City Company under the order of Judge McLellan in 1889, and could not set up the possession of said company or of Fisher as receiver, as they do not trace title to the company; and any title in the company would

be an outstanding title, which as has already been fully discussed, defendants in error could not in this case set up.

There were some defendants in error pleading not guilty, viz: John Williams and John W. Bullard, who offered no evidence whatever of title from any one and no evidence of ever having been in possession. Is it possible that the court could have been right when it instructed the jury that it must find for these defendants?

XX. Some Other Questions that Should Have Been Left to the Jury.

The Circuit Court of Appeals affirmed the judgment of the court below mainly upon the admissibility and effect of the last will and testament of Gabriel de Rivas and the protocols accompanying the same (p. 488, Rec.) and therefore we will first allude to the questions of fact in the province of the jury arising out of the alleged will and the protocols accompanying it.

1. Question of Fraudulency of Will and Protocols.

Objection was made to the admission of the purported will of Gabriel de Rivas, and the protocols, that they were fraudulent, spurious, and forged (p. 299, Rec.).

"Few questions in the law have given rise to a greater conflict of authority than the one under consideration. But for many years past the tendency has been, in England and in the United States, to consider the question of fraud as a fact for the jury under the instruction of the court. And the weight of authority seems to be now, in this country, favorable to this position."

Warner v. *Norton*, 61 U. S. 460.

"But when matters alleged to be fraudulent are investigated in a court of law, it is the province of a jury to find the facts, and determine their character, under the instruction of the court."

Gregg v. *The Lessee of Sayre et ux.* 8 Pet. 252.

"It was forty years old. No proof of its execution was necessary; its antiquity proved it. But, it is said, the proof and attestation before the court in Virginia, to give it validity, was wanting, and that it appeared to be so upon the face of the paper given in evidence. That might, or might not be so. But it was a fact in controversy between the parties, as much so as any other fact in the case, and the court could not be asked to instruct the jury upon their belief of another single fact, namely, the residence of Simon Summers in the County of Alexandria, that the party was not entitled to freedom under the statute of Virginia. The instruction as asked excludes all the other evidence, and puts the legal issue proposed on it upon a single fact. It excludes, also, all presumptions which the jury might make from the other evidence in connection with antiquity of the paper which was before them. The court did not err in refusing to give the first instruction."

Adams et al. v. *Roberts*, 2 How. 496.

From the above authorities it should have been left to the jury to determine whether these documents were fraudulent, under proper instruction from the court as to what was the law. Also there should not have been excluded any presumptions the jury might make from the other evidence in connection with the antiquity of the papers before them.

There were extrinsic facts specially within the province of the jury bearing on whether the so-called will of Gabriel de Rivas was a forgery.

a. The Will of Gabriel de Rivas.

It concluded as follows:

"and signed as my friend, Don Jose Maria de la Penas, friend of Gabriel de Rivas, as he could not write. Signed, Jose Maria de la Penas."

The contention of defendants in error was that Gabriel

de Rivas being unable to write, that Jose Maria de la Penas signed his (de la Penas's) name to the will for Gabriel de Rivas. Still, the document does not state that Jose Maria de la Penas signed at the request of Gabriel de Rivas, and defendants themselves offered evidence showing that Gabriel de Rivas could write. The purported marriage contract with Maria Moreno purports to be signed by Gabriel de Rivas in the presence of witnesses (p. 187, Rec.); and there is also offered a promissory note purporting to be signed by Gabriel de Rivas (p. 190, Rec.).

Again (pp. 125, 126, Rec.), there purports to be an affidavit by Manuel de Laro and six others, February 27, 1807, to the effect that they had been called by Gabriel de Rivas and informed that this was his last will and testament, and that he seemed to them to be in the possession of his full senses. If this be true, it is further evidence bearing upon why he should not himself have signed the will.

Then there is what purports to be a petition of Eugenio Anto. Sierra (p. 145, Rec.) to the effect that the property of Gabriel de Rivas, owing to his prolonged sickness, had at the time of his death been exhausted, with the exception of two houses. If Gabriel de Rivas was a man of sufficient importance in the community to have accumulated property in excess of two houses, that was a fact, taken in connection with the other evidence, bearing upon whether he was a man who could himself have signed his will.

In Exhibit 13, offered by defendants, viz: the purported proceedings, in Spanish, of Maria Moreno to sell the particular piece of property in question, there is what purports to be a promissory note, under date of October 4, 1812, given by Gabriel de Rivas, and not knowing how to sign, signed for him by Maria Moreno. Here is further evidence which it was for the jury to con-

sider bearing upon whether he was able to write, and also bearing upon whether the will was genuine. In another aspect, a note signed by Gabriel de Rivas in 1812 would be evidence that he was living then, *i. e.*, some four years after the purported date upon which the will was probated, the purported probate proceedings citing his death.

b. The Purported Sale of the Property upon the Petition of Eugenio Anto. Sierra, Testamentary Executor.

Here is another question appearing upon the face of the document offered that should have been submitted to the jury. It is attempted to show that the property was sold upon a petition of Eugenio Anto. Sierra as testamentary executor for the estate of Gabriel de Rivas. Was he the testamentary executor? In the so-called will of Gabriel de Rivas he was appointed guardian of the minor children—an office under the Spanish law distinct from that of executor; and there is no evidence offered of his having ever been appointed as executor.

c. Genuineness of Documentary Evidence Offered.

The answer of the Pensacola City Company (pp. 77, 78, Rec.) shows that it is not even pretended that these papers were known to have existed until after 1872, but that soon after a suit brought in that year was instituted, and on a thorough search of the Spanish Archives the proceedings were found. As to the age of the documents there is no evidence. It further appears from the testimony of Colonel A. C. Blount, for respondents (p. 302, Rec.), that Mr. La Rua had possession of these papers during the war, and the witness thinks that LaRua took them way with him, away from Pensacola. To be ancient

documents the papers should have been shown to have been at all times in proper custody at a proper place.

It also appears from Colonel Blount's testimony (p. 302, Rec.) that Mr. Brainard, who was agent for the Pensacola City Company (p. 47, Rec.), had access to these Archives at all times. The documents have none of the proper file marks, dates of record, and other evidences of authenticity, and there was every opportunity for them to have found their way among the Spanish Archives only just about the time they were first discovered, less than thirty years before the bringing of this suit.

All this was evidence the jury should not have been deprived the privilege of considering in determining the very important fact involved, of whether the papers were forgeries.

2. Was the Land Referred to in the Chain of Title Whereby Respondents Attempt to Show an Outstanding Title in the Pensacola City Company the Same Land as is Referred to by the Grant of Gabriel de Rivas?

Here was another question of fact that could be determined only by the jury.

Whether the place of location agrees with the description in the grant, is a question for the jury.

Pinkerton v. *Ledoux*, 129 U. S. 346.

Where the boundaries of land described in any deed really are, is always a question of fact.

Anders et al. v. *Watkins*, 26 Fla. 401.

"It is the duty of the court to construe written instruments; but the application of their provisions to external objects described therein is a peculiar province of the jury. Whether this document describes Summer Street as it was afterwards laid out from high-water mark;

whether 'the lower corner of Gill's Wharf next to the sea' was at that time (in 1683) at low-water mark; whether this street was staked out to low water, were questions which should have been submitted to the jury."

Richardson v. *The City of Boston*, 60 U. S. 271.

The grant to Gabriel de Rivas is designated as

"300 arpens of land, giving metes and bounds, situated at more than a quarter of a mile of English terrestrial measurement from the mouth of the rivulet of the Marsh between the north, northeast, northeast by north; which rivulet is the extreme east of this population according to the plan thereof" (pp. 27, 30, and 31, Rec.).

The descriptions in the other documents offered to trace title to the Pensacola City Company, variances in which in some instances have already been alluded to in discussing the admissibility of those documents, will be found as follows:

First. Sale to Gregario Caro, October 20, 1817 (pp. 206, 207, Rec.).

Second. Gregario Caro to James Fitzsimmons *et al.* October 22, 1817 (p. 233, Rec.).

Third. James Fitzsimmons to Cerile de Morant, attorney, etc. November 22, 1819 (p. 235, Rec.).

Fourth. Partition between John Chabeaux and Lawrence Millaudon, October 1, 1818 (pp. 311, 312, Rec.).

Fifth. James W. Exum, sheriff, to Brosnahan and Mitchelet, January 6, 1834 (p. 317, Rec.).

Sixth. John Brosnahan and Mitchelet to Walter Gregory, November 6, 1834 (p. 312, Rec.).

Seventh. James W. Exum, sheriff, to Walter Gregory, February 9, 1835 (p. 316, Rec.).

Eighth. Millaudon to W. H. Chase, January 23, 1837 (p. 314, Rec.).

Ninth. Articles of merger into Pensacola City Company Association, January 13, 1837 (p. 321, Rec.).

Tenth. In the purported deed of May 13, 1870, from the Pensacola City Company, a joint stock association, to the Pensacola City Company, a *corporation, the description* is according to the United States Survey, in sections and townships, as follows:

"Also that tract of land lying and being in the city of Pensacola, in sections 8 and 21 of said township and ranges according to the said survey, and known as the Chabeaux tract, containing in section 8, 226 acres, and in section 21, 9.71 acres." (Pp. 335–337, Rec.)

There are no conveyances offered from the Pensacola City Company to any of the defendants in error here, or to their grantors, and the identity of the description changes in the deeds that they offer, from sections and townships to lots and blocks, according to the plan of Thomas C. Watson, one of the defendants.

The description of the land in the pretended title of Gregario Caro is simply a statement of 300 arpens, the location of which is nowhere shown; and in the purported sale from Gregario Caro to Fitzsimmons, Smythe and Chabeaux, the description is of a tract of land one mile from the city of Pensacola, known as the Brick Yard. It is certainly a question of fact which a jury should pass upon whether this alleged purchase by Gregario Caro and John Chabeaux was of, and the property described in the other documents is, the tract of land claimed by petitioners in this suit and covered by the grant to Gabriel de Rivas.

3. Possession a Question for the Jury.

At the opening of this brief is cited the evidence showing possession (by plaintiffs in error), of the property sued for and it is pointed out that defendants in error have

offered no evidence of possession either by and through Fisher's appointment as receiver, or under the deeds to them of recent date from strangers to the outstanding title attempted to be set up in the Pensacola City Company. The defendant in error Fisher himself is no exception. He offers no evidence of possession but rests solely on deeds of recent date from strangers to the title.

There is also strong evidence, pp. 83, 84, Rec. already alluded to, of admission of title by the defendants in error, William Fisher and W. A. Blount. The witness Fisher as late as 1892 buys part of the lands from Caro; has deeds made out by and the title passed upon by Mr. W. A. Blount as his attorney, and William Fisher recognizes his title, buying the lots from him.

There is little semblance of controverted facts upon the subject of possession in this case. But if a court is not justified in instructing a jury which way to decide a case, where there are controverted facts, it is also not justified in instructing a jury to decide a case contrary to all the evidence. The evidence of possession by the Rivas heirs is so strong that if the case should have been taken from the jury at all the instructions should have been to find for plaintiffs in error.

As to controverted facts, on p. 54, Rec. it will be seen that the court admitted the abstract of title purporting to be signed by Jos. E. Caro in 1835, as Keeper of the Public Archives of West Florida, for the purpose, as stated by the court, of controverting the memory and statement of the witness A. V. Caro, that his father had claimed these lands for his mother. We have already contended that this abstract was not admissible for any purpose, but if it was allowed to go to the jury to controvert the testimony of A. V. Caro that his father had claimed this property for his mother, after that the court should have not taken from the jury the right of deciding whether Jos. E. Caro (who, it will be recalled, p. 32, Rec.

had married Paula Rivas, a daughter of Gabriel de Rivas), by setting his hand and seal as a public officer to an abstract of papers recorded in his office, thereby recognized as valid the title of which the paper he signed purported to be an abstract.

Was this abstract introduced really to contradict the testimony of A. V. Caro or to try and establish the genuineness and authenticity of documents, of the genuiness and authenticity of which defendants had no evidence?

Defendants in error contend that a map was made of the property by the Pensacola City Company Association in 1835, showing the property in lots, blocks and streets; yet if this was done there is evidence that the lots and blocks never existed except on paper, and that the property itself was a wilderness as late as after the civil war. The witness, Manuel Gonzales, remembers when the property was taken possession of by A. V. Caro after the war, and states:

"To my knowledge there were only a few negro houses and no evidence of streets or public improvements, nothing but a regular wilderness." (P. 67, Rec.)

The evidence of possession withdrawn from the consideration of the jury also had a most decided bearing in the following respect. It was indeed strange that while defendants in error offered documentary evidence to show an outstanding title in the Pensacola City Company, they offered no evidence whatsoever of possession by any of the parties named in the documentary evidence, and that there was undisputed testimony of possession by the Rivas heirs for some eighty odd years without molestation or interruption. It was for the jury to consider this in passing upon whether the documentary evidence was forged or genuine.

Possession is also a question for the jury in a still more

important aspect of this case. There was evidence of possession by the Rivas heirs for more than eighty years, a period longer than was required by common law or is now required by the statutes of Florida to give a good title as against the pretentions of those relying upon documentary evidence unsupported by evidence of possession. A bare title is an inchoate title and incomplete without possession (72 Fed. Rep. 305). It was for the jury to have found whether the Rivas heirs were in possession for the period that there was testimony to the effect that they were in possession. Any rights plaintiffs might have acquired, or that defendants might have lost, depended upon the claim of ownership coupled with the evidence of possession. If the record shows possession in plaintiffs during the time they claim, then they and those through whom they claim have been in possession of the tract of land ever since it was granted by the Spanish Crown to their ancestor, Gabriel de Rivas, in 1806. In the case of *Smythe* v. *Canal & Banking Co.* (93 Fed. Rep. 929), decided by the judge who presided in this case in the United States Circuit Court for the Northern District of Florida, the court says:

"In any view of the case, we fail to see how the plaintiff can recover. If we should go beyond the foreign grants, shown to have appropriated as private property the same land conveyed by the State to the plaintiff, even before the existence of the United States as a nation, we would be constrained to sustain the title of the defendants under the laws of prescription they have all pleaded, and in support of which have administered satisfactory proof of long possession and enjoyment under acts translative of property."

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JANUARY 9, 1905.

COPY.

FILED
JAN 28 1905
JAMES H. McKENNEY,
Clerk

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1904.

No. 424.

FLORIDA McGUIRE and MATILDA CARO,
Plaintiffs in Error,

v.

WILLIAM A. BLOUNT, WILLIAM FISHER, PENSACOLA CITY COMPANY, *et al.*,
Defendants in Error.

Reply Brief for Plaintiffs in Error.

HILARY A. HERBERT,
BENJAMIN BUCKLU,
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Counsel for Plaintiffs in Error.

JANUARY 26, 1905.

IN THE

Supreme Court of the United States.

October Term, 1904.

FLORIDA MCGUIRE and MATILDA CARO, *et al., Plaintiffs in Error,*
v.
W. A. BLOUNT, WILLIAM FISHER, *et al., Defendants in Error.*
} No. 134.

REPLY BRIEF FOR PLAINTIFFS IN ERROR.

Counsel for defendants in error state their contention to be as follows:

1. "That the title of Gabriel de Rivas was divested out of him by judicial sale made by the Spanish authorities on October 20th, 1817."
2. "That if the title was not so divested, the Rivas heirs are barred by adverse possession for the period of the statute of limitations." (P. 17, first brief of defendants.)

In our opening brief we have argued at length against the first contention; and while we will further on reply to some of the reasons now advanced in favor of that contention, we will reply to the second contention first. This is the first argument we have had to the effect that the Rivas heirs were barred by adverse possession, and we

believe we can show to the court beyond all peradventure of doubt that they are not so barred.

I. The Rivas Heirs are Not Barred by Adverse Possession.

The contention that they are is made pp. 54–56, first brief of defendants in error, and counsel take as the basis for that contention, that since the decree rendered by Judge McClellan on June 17, 1889, Fisher, as agent of the Pensacola City Company and those holding under it, has been in possession of the property under color of title conferred by the decree, collecting rents and paying taxes, and that this makes a valid title by the statute of limitations. The testimony of Fisher given at the trial of this case in 1902 is:

"I have been receiver since April, 1887." (P. 87, Rec.)

"I have never been dismissed; no formal dismissal." (P. 309, Rec.)

In this same brief of defendants this language is used:

"The receiver was not discharged but has been in possession ever since, and has at all times recognized complainants' title, and while before the final decree he accounted to the court, after the final decree he attorned to the Pensacola City Company and settled with the persons holding under it." (P. 16, first brief.)

It can therefore be taken as admitted, as it certainly is proved by Fisher's own testimony, that when counsel refer to Fisher as having been in possession since the final decree as agent for the Pensacola City Company, that they mean possession in his capacity as receiver, an officer of the court. Now, if occupation and possession by Fisher within the requirements of the law of Florida, for long enough to give adverse possession was proved (which we

shall show to the court is not the case) there would still be the question whether a receiver, an officer of the court and acting under its direction, was holding adversely to these plaintiffs within the meaning of the Florida statute.

But it is not necessary to consider this question. Even if the holding of a man as receiver be such a holding as the statute of limitations could run against, it has not run in this case. The decision rendered June 17, 1889, by Judge McClellan was appealed from by the defendants to the Supreme Court of Florida. That court affirmed the decree in 36 Fla. 36. This was at the June term, 1895, of the Supreme Court of Florida. It can hardly be contended that there was occupation and possession, both of which are required by the Florida statute (App. E. of defendants' brief, p. 75), that could be adverse before the termination of this litigation, and pending an appeal from the decree by the defendants in that suit. Therefore if any statute could run at all in favor of Fisher holding as receiver, it certainly did not commence to run before June, 1895. The period of limitation is seven years and the present suit was brought in January, 1902, less than seven years from the affirmance by the Supreme Court of Florida of the decree of Judge McClellan.

There are however two other distinct reasons why no statute of limitations has run, entirely independent of whether these defendants can set up Fisher's holding as receiver as adverse possession to plaintiffs.

1. The decree of Judge McClellan was not the decree of a competent court, and the statute of limitations does not run against it.

The statute draws a distinction where the occupant or those under whom he claims, entering into possession of premises under claim of title *exclusive of any other right*, found such claim upon a conveyance, and where they

found it upon the decree of a court. If they found it upon a conveyance the statute only requires a written instrument as being a conveyance of the premises. If they found it, as is done here, upon a decree, the law expressly provides that it must be the decree of "a competent court." Counsel say:

"Whether this decree was, or not, a nullity, however, is immaterial, for it was in writing, and purported to decree the title to the Pensacola City Company, and its assigns, and this was color of title, even though the decree was void." (P. 55, first brief.)

Citing as authority *Carn* v. *Haisley*, 22 Fla. 317.

That case does not support this statement. What the court was considering was the admission of writings claimed to be deeds to show color of title under which adverse possession could be set up. There were several writings offered. Where objected to, such writings as were null and void, otherwise not written instruments, as being conveyances, they were not admitted. What was admitted and the court discusses was a tax deed, regular on its face and properly acknowledged. Now this decision, discussing the part of the statute that permits the occupant or those under whom he claims to found adverse possession upon an entry under a written instrument *as being a conveyance of* the premises, falls far short of deciding that where they found claim on a decree all that would be required would be a writing that on its face was a decree, the statute having itself made a distinction and said that where entry under a decree is relied on as a ground to give color of title it must be the decree of a competent court. If it is shown, as is shown in this case (see citations to the Record in our first brief, pp. 20–27, and our brief in the case of *Keyser* v. *Davidson*, No. 196, a branch of this case), that the decree was null and void be-

cause of the disability of the judge to render it, then occupation and possession is not founded upon the decree of a competent court, and no authority can be found to sustain the view that it is:

"In all cases where a court is rendered incompetent to preside, its proceedings during such incompetency are as invalid as though it had never possessed jurisdiction."
Freeman on Void Judiciary Sales, Sec. 7.

Freeman on Judgments, Sec. 146, discussing the disability of judges prescribed by statute, in many cases referring to statute law not as strong as the Florida Statute, *i. e.*, where the judge is merely prohibited from sitting in cases in which he is related to parties, without, as does the Florida law, declaring by statute that decrees and orders in such cases shall be null and void, says:

"But the general effect of the statutory prohibitions in the several States is undoubtedly to change the rule of the common law so far as to render those acts of a judge, involving the exercise of judicial discretion, in a case where he is disqualified from acting, not voidable merely, but void."
Freeman on Judgments, Sec. 146.

In providing that where occupation and possession is set up under a decree it must be the decree of a competent court, the legislature was keeping within the limits of well-recognized legal principles. It was not attempting to give rights under what the law has always recognized could under no circumstances convey any rights. To permit a statute of limitations to run against a void judgment would be contrary to the most settled principles of the law. To permit the statute, on the other hand, to run against a written instrument as being a conveyance, was in accordance with well established principles of law.

"A void judgment is in legal effect no judgment. By it no rights are divested; from it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars any one. All acts performed under it and all claims flowing out of it are void."

Freeman on Judgments, Sec. 117.

"Void judgments are mere nullities and may be safely ignored by those whose rights are attempted to be affected thereunder."

11 American Decisions, Note, p. 755.

We have already referred (p. 25 of our first brief) to the fact that no affirmance of this null and void judgment by the Supreme Court of Florida could, as contended by defendants, give it force and effect. To what is said there we wish to add, that the Constitution of Florida expressly limits the Supreme Court to appellate jurisdiction in all cases in equity originating in circuit courts. Sec. 5, Art. V, Constitution of Florida (see Revised Statutes of Florida, p. 55).

But we are now discussing the application of the statute of limitations, and if that statute could run against the affirmance of a void judgment it could only do so from the date of its affirmance, and from that date to the bringing of this suit, as has already been shown, was not seven years.

2. The lands were never possessed and occupied by Fisher, in the way required by the law of Florida to give after seven years good title.

Counsel have only quoted, in giving what they term the statute of limitations of Florida (App. E, p. 75 of first brief), a part of the law. The part quoted is Section 5, p. 732, McClellan's Digest. Section 6 of the same page, not referred to by counsel for defendants, is as follows:

"Sec. 6. For the purpose of constituting an adverse

possession by any person claiming a title founded upon a written instrument, or a judgment or decree, land shall be deemed to have been possessed and occupied in the following cases:

"First. Where it has been usually cultivated and improved. Or

"Second. Where it has been protected by a substantial enclosure. Or

"Third. Where (although not enclosed) it has been used for the supply of fuel, or of fencing timber for the purpose of husbandry, or for the ordinary use of the occupant.

"Fourth. Where a known lot or single farm has been partly improved, the portion of such farm or lot that may have been left not cleared or not enclosed according to the usual course and custom of the adjoining country, shall be admitted to have been occupied for the same length of time as the part improved or cultivated."

McClellan's Digest, p. 732.

It only requires a reading of this section to show that there is no evidence of possession and occupation by Fisher for any time in such a way as is required by this section in order to constitute that adverse possession that it is provided in the preceding section shall be a bar under the statute.

3. There is no adverse possession shown by any one that would bar this action.

Counsel for defendants (pp. 54–56 of their brief) have planted their claim to adverse possession solely upon Fisher's possession; and we might therefore rely upon that fact. But while on this subject we desire to clear the whole matter up, once for all, and show that under defendants' own contention there is no adverse possession in any one else if not in Fisher. Defendants in error contend that the first possession of this tract by any one after the death of Gabriel Rivas was in 1867 (top p. 15,

first brief). It is undisputed that A. V. Caro moved on the tract to live about 1869 or 1870, has been there ever since and is there now. Counsel say:

"Between the time when Caro began to lease, and the appointment of the receiver, both claimants had possession of different portions of the tract and constant litigation between them occurred, constituting what the courts know as mixed possession.

"In April, 1889, all possession of either side ceased, for upon the bill just above mentioned, the court appointed William Fisher to take charge of all the lands and to collect the rents therefrom." (P. 16, defendants' first brief.)

This statement shows that defendants do not claim adverse possession through the holding of any one but Fisher, as receiver. For it is well settled that no prescription can be claimed where there is a mixed possession. *Deputron* v. *Young*, 134 U. S. 241; *Brownsville* v. *Cavazos*, 100 U. S. 234. It also shows, which we will refer to in discussing another phase of the case, that defendants disclaim any possession in their grantors prior to 1867 (p. 15, first brief).

This brings us to another phase of this case, that on the hypothesis that the possession was mixed, which hypothesis we do not admit to be true, should be discussed.

"Where the rightful owner is in the actual occupancy of a part of his tract, he is in the constructive and legal possession and seizin of the whole, unless he is disseized by actual occupation and dispossession; and where the possession is mixed, the legal seizin is according to legal title."

Deputron v. *Young*, 134 U. S. 241.

Our contention is that the rightful owners, through their agent, Caro, were at all times from the time that counsel say this mixed possession began, in the actual occupancy of part of their tract and in the constructive

and legal possession and seizin of the whole, which we will discuss further on. But since counsel contend that the possession was mixed, we will discuss the facts as controlled by the law applicable to mixed possession and show that the legal title is not with defendants but with plaintiffs.

II. No Legal Title in Defendants.

Assuming for the sake of argument the admissibility of the documents offered by defendants, they fail to show that they have a legal title. Take their alleged chain of title. From Gregario Caro in 1818 to the Pensacola City Company, a corporation, there is no possession shown under any of the alleged conveyances. Counsel claim (p. 12 of brief) that there was no *possessio pedis* of any person claiming under the judicial sale of Gregario Caro to 1869. They undertake to show that Gregario Caro acquired this property at a judicial sale of the estate of Gabriel de Rivas October 21, 1817, and the day after, October 22, 1817, sold to James Fitzsimmons, Samuel M. Smythe and John Chabeaux.

That the year afterwards, October 1, 1818, the said John Chabeaux declared that as to his 1–3 interest Demorant and Millaudon were equally interested with him, which would give each of the three a 1–9 interest in the entire tract. These interests for the sake of convenience we will reduce to eighteenths, eighteenths being the fractions in which the Pensacola City Company claims afterwards to have acquired the property, and we would have ownership as follows:

Chabeaux, 2–18;
Demorant, 2–18;
Millaudon, 2–18;

It is next claimed that a year later, November 22, 1819,

Fitzsimmons sold to John Chabeaux his undivided third, or 6–18, which would vest in Chabeaux 8–18 of the entire property.

Next that Chabeaux's interest to the extent of 5–18 was conveyed in January, 1834, to Brosnahan and Michalet, and that they conveyed to Walter Gregory (see p. 9, defendants' first brief, and pages of Record cited there). On page 33 of defendants' brief it is admitted that these conveyances were void. 3–18 of Chabeaux's interest is not attempted to be accounted for.

Now from the declaration of Chabeaux 1–3 of his interest, 2-18 of the whole, was vested in Demorant, October 1, 1818. Demorant's interest is next heard of in a purported conveyance of February 9, 1835, to Walter Gregory, of an undivided 3–18. Where Demorant got 1–18 is nowhere shown. That this conveyance was not good is also admitted by counsel (p. 33 of their brief).

Now from the declaration of Chabeaux, Millaudon in 1818, like Demorant, had a 2–18 interest declared to him. It is undertaken to show that W. H. Chase on November 23, 1837, acquired Millaudon's interest, purporting on the face of the conveyance to be a 4–18 interest, though there is nothing to show that Millaudon ever owned more than 2–18. This purported conveyance we claim (pp. 51–52 of our first brief) passed no title at all.

Therefore all it is claimed that Gregory acquired for the Pensacola Association was a total 8–18 interest as follows: 5–18 out of John Chabeaux's 8–18 interest, but acquired through conveyances admitted (p. 33 of defendants' brief) to have been void. 3–18 coming from Demorant's interest, Demorant never having had but a 2–18 interest; and the instrument by which this is alleged to have been acquired admitted not to be good (p. 33, Rec.).

Thus Gregory really had title to nothing that could be put into the Pensacola Association.

Another interest it is claimed went in is a 4–18 interest alleged to have been acquired by Chase from the sale of the Millaudon interest, January 23, 1837, Millaudon never having had originally but a 2–18 interest; and this conveyance, if our contention (pp. 51, 52 of brief) be correct was null and void. Defendant's counsel also show they appreciate this weakness, saying: "Chase and Gregory having as they thought acquired the Chabeaux and Fitzsimmons interests," etc. (P. 10, first brief.) Out of the alleged original sale to Chabeaux, Smythe and Fitzsimmons, it is not attempted to trace the Smythe interest at all to the Pensacola Association, or any one else, save by the following: In the instrument offered as Exhibit 31, purporting to be the agreement whereby the Pensacola City Company acquired an interest of Chase in lands that had been secured for it by Chase and Gregory, it is said (p. 320, Rec.):

"That whereas, the said William H. Chase had contracted to purchase certain lots and lands lying and being near the City of Pensacola, for the use of said Company, of and from one Samuel M. Smythe, the conveyance thereof had not yet been executed."

And further states (p. 321, Rec.):

"And whereas all the lands contracted to be purchased from the said Samuel Smythe have been since conveyed to the said Wm. H. Chase," etc.

Now such a recital without offering the instrument whereby Chase acquired title from Smythe certainly could not vest any of Smythe's interest in the Pensacola Company.

Page 53 of our opening brief we point out the inadequacy of the description in this deed, so far as showing a conveyance of the Rivas tract. This inadequacy counsel undertake to account for as being cured (p. 10 of their

brief) by the fact that attached to this deed but not appearing in the printed record, but now before this court, having been brought up by stipulation, is a map showing the several parcels of land, comprised within yellow lines, conveyed by the deed, on each of which parcels is written "Pensacola City Company." The map does not appear to have ever been recorded. If such a map can supply the inadequacy in the description contained in the writing itself it can not supply want of title shown to have existed in the grantors. This map is different from and should not be confused with the Chase map, put in at the same time and which will be alluded to in another connection.

The next conveyance, Exhibit 32 (pp. 335–338, Rec.), purports to be the instrument whereby the Pensacola City Company, a corporation, acquires the property of the Pensacola City Company, a joint stock association. It is made in 1870, 43 years after the other conveyance, and of course can convey no title to the corporation; that the stock company did not have to convey.

On pp. 12, 13 of our opening brief we set forth the grantors from whom defendants in this suit, who pleaded, trace title. There is nowhere offered deeds to any of these grantors from the Pensacola City Company, and the title defendants offer as being in them stands separate and apart from the title attempted to be shown in the Pensacola City Company, except as founded upon the null and void decree of Judge McClellan. Counsel (pp. 56, 57 of their brief) take the ground that by this null and void judgment the legal title has been shown to be in the Pensacola City Company and its assigns, and that the defendants are not trespassers but hold under parties who were complainant to the decree above mentioned (the decree of Judge McClellan).

There is no writing offered anywhere in the record to show assignment from the Pensacola City Company to

the grantors of these defendants and they rely solely as connecting their title with the Pensacola City Company upon the fact that the grantors from whom they claim are named as complainants with the Pensacola City Company in the suit in which Judge McClellan rendered his null and void decree, and that that decree stated that the title was vested in the complainants, referred to as the Pensacola City Company and its assigns. Defendants in error have therefore failed completely to show a true title in themselves. The conveyances to the Pensacola City Company whereby the Chabeaux interest is attempted to be traced are admitted to be null and void. The conveyance whereby the Fitzsimmons interest is attempted to be conveyed is shown not to be good, and as has already been pointed out, there is no conveyance whatever shown of the Smythe interest. And the defendants finally rest their title absolutely upon what rights their grantors, to whom no conveyances whatever are shown, acquired by a null and void decree in 1897, and show no possession in themselves under the conveyances from those grantors, relying solely upon alleged possession in Fisher, as receiver by that decree. The true title therefore is not under any circumstances with the defendants.

III. True Title With Plaintiffs in Error.

Plaintiffs prove the grant to their ancestor. This has never been disputed, and is admitted by defendants.

"On the 10th of November, 1806, Juan Ventura Morales, intendent, etc., made a grant of 300 arpents of land on the outskirts of the City of Pensacola, to Gabriel de Rivas." (P. 5, first brief.)

Plaintiffs prove that they are the heirs of Gabriel de Rivas and this is also admitted by defendants.

"The plaintiffs are the direct descendants of Paula

Caro (born Rivas) and based their claim to the property in controversy on the Spanish grant to Gabriel de Rivas, and their descent from him through Paula Rivas." (P. 5, first brief.)

This establishes the true title to be with plaintiffs, and if the contention of defendants' counsel is correct, that there was no possession with any one until 1867 and that the possession was mixed from 1870 to the appointment of Fisher as receiver, and that in 1889 all possession on either side ceased because the court appointed Fisher to take charge of all the lands and collect the rents therefor, then the legal seizin is according to the legal title, and is with plaintiffs.

We now come to the consideration of the first contention of defendants, viz: that the title of Gabriel de Rivas was divested out of him by a judicial sale made by the Spanish authorities on October 20, 1817 (p. 17, first brief of defendants).

IV. The Title of Gabriel de Rivas was not Divested out of Him by a Judicial Sale Made by the Spanish Authorities on October 20, 1817.

We have already quite fully discussed this question, *first*, from the standpoint that the papers offered, if admissible, failed to prove a judicial sale (pp. 14–20 of our first brief). *Second*, from the standpoint of the papers offered not being admissible (pp. 30–40 of our first brief). Also the subject is ably discussed in an appendix to our brief that accompanied the petition for writ of certiorari in this case prepared by the law firm of Runcie, Portuando & Lamar, of Havana, Cuba; and we call the court's attention to this discussion. What we will say here will be in the nature of a reply to certain contentions put forth in the defendants' brief.

The law applicable, where defendants do not set up title in themselves but seek to maintain their possession as a mere intruder by setting up title in a third person is as follows:

"The defendant sets up no title in himself, but seeks to maintain his possession as a mere intruder by setting up a title in third persons, with whom he has no privity. In such a case it is incumbent upon the party setting up the defense to establish the existence of such an outstanding title beyond controversy. It is not sufficient for him to show that there may possibly be such a title. If he leaves it in doubt, that is enough for the plaintiff. He has a right to stand upon his *prima facie* good title, and he is not bound to furnish any evidence to assist the defense. It is not incumbent on him, negatively, to establish the non-existence of such an outstanding title; it is the duty of the defendant to make its existence certain.

"Besides, this is the case of an outstanding title set up under a deed executed in 1796, under which, in respect to the act in controversy, the grantees are not shown either to have had, or to have claimed any possession or right of possession."

Greenleaf's Lessee v. *Birth*, 6 Peters, 312.

Among the papers relied on to show a judicial sale in 1817 of this tract there is no plat of the land and nothing giving a description of it by metes and bounds.

"To avoid for the future the litigations and confusions of which we have examples, every day, we have also judged it very requisite, that the notaries of this city and the commandants of posts shall not take any acknowledgment of conveyance of land obtained by concession, unless the seller (grantor) presents and delivers to the lawyer the title which he has obtained and in addition being careful to insert in the deed the metes and bounds and other descriptions which result from the title and the process verbal of the survey, which ought to accompany it."

Article 7, White's Recopolacion, p. 236. This was enacted prior to 1800.

"But without a survey and possession the authenticity of the grant would have nothing to support it but parol testimony resting only in the knowledge of individual witnesses; for if what purports to be a grant is produced by the party from some private receptacle, and the handwriting of the official signature proved by witnesses, and even proved to have been executed when it bears date, it is but parol testimony, open to doubt, since its authenticity depends upon the truth or falsehood of the witnesses, instead of resting upon the certainty of the public records of the nation."

United States v. *Jose Castro*, 65 U. S. 351.

Defendants citing *Applegate* v. *Lexington, &c. Mining Co.* 117 U. S. 255, lay down a rule for making a document admissible as an ancient document (p. 24, defendants' first brief). The first three requirements of the rule are —

1. That it should not raise on its face any suspicions of its genuineness.

2. That it should appear upon its face to be more than thirty years old.

3. That it should have come from the proper, that is, the natural custody.

The facts of the case in which this rule is laid down differ very materially from the facts here. In that case from the papers in question, two deeds, by their appearance offered strong evidence of their genuineness and antiquity, and they were free from any badge that would excite suspicion of fraud or forgery. All the circumstances under which the papers were first found to exist were proved, and they were shown to have been found among papers offered in evidence in a suit as far back as 1816, of which suit there was an unquestioned record; and it was also made clear from evidence offered that at least as early as 1825 the deeds had been on file and remained in the custody of the court down to the time they were produced by the clerk, a period of 55

years. Their genuineness was further shown by both deeds bearing a certificate apparently ancient and genuine, one with the signature of the recording officer and the other without signature, to the effect that the deeds had been recorded in the year 1816.

The papers here offered fall far short of compliance with the first three requirements of this rule. All that is relied on to admit these papers offered to prove a judicial sale, are:

1. That they came in the morning mail from one Scarlet, Surveyor-General, upon the day of the trial (see Subject 20, p. 10, second brief of defendants).

2. That they refer to matters that occurred more than thirty years ago.

Now we contend:

1. That these papers raise on their face a suspicion of their genuineness.

Counsel for defendants have had brought to this court these papers which they claim to be originals and we would thank the court to examine them. It is attempted to give them a significance to which they are not entitled by treating them as a connected official record made at the time of the occurrences to which they relate. Of the transactions to which they refer, counsel say:

"Some documents were recorded or registered, but not a document like this, which consisted of detached original papers, *filed from time to time by the parties interested, as the proceedings progressed and each paper was united with the rest.*" (P. 36, first brief of defendants.)

Now on these papers, designated by counsel as Proctocol A, and referring to a transaction which, going by the papers themselves, extended from 1806 to 1817, there is nothing to show that they were filed from time to time by the parties interested as the proceedings progressed and each

paper was united with the rest. There is not a file mark of any character or description on any one of these papers. They are to all intents and purposes a lot of separate disunited papers that have been collected, when or by whom nowhere appears; and fastened together with a couple of fasteners for holding papers, such as are in use to-day, which fasteners are as new and bright in appearance as if put there yesterday; and there is nothing on the papers designating them as a protocol, and nothing to show them to have ever been an official record, built up as the proceedings to which they refer progressed.

Counsel designate these papers as "Protocol A" throughout their brief. As has already been stated, there is nothing on the papers designating them as a protocol. Written on the first page is an "A" and below it "Ano" followed by apparently two letters too faint to make out with a magnifying glass, and then "1807." Now both the large "A" and the "1807" look like they had either been put there much more recently than the other writing or restored recently. This is particularly apparent under a magnifying glass. Around these papers, to protect them, but not fastened to them, is a cover (yellow, possibly to show the papers are Spanish) made by folding in the center a sheet of such paper as is ordinarily used by lawyers, when cut into smaller sizes, as covers or backs for contracts, deeds, or papers to be filed in a *nisi prius* court; and on the back of this cover, written with a lead pencil, are the words "Protocol A." This cover is a very fresh-looking sheet, judging from its appearance put around the papers since this suit was brought. These papers certainly do not come within the requirements of not raising on their face a suspicion of genuineness—they raise such a suspicion at once.

Besides the suspicion apparent from the face of the

papers, there are extrinsic circumstances in the record corroborative of this suspicion. We discuss these pp. 39, 40 of our first brief. Counsel for defendants, Subject 21, p. 10 of their second brief, criticise our statement, that these papers were not known to exist until after 1872, as being incorrect and misleading, and quote as what we base our assertion upon, an allegation in a bill of complaint on p. 78, Rec. We do not think a reading of that allegation shows that our statement was either incorrect or misleading. Counsel, explaining what is meant by the allegation, say:

"This means simply that the existence of the papers was unknown to the Pensacola City Company and the Rivas heirs, until the question of the title of the former for the first time caused search to be made. There was no occasion for a search until that time."

This is an admission that the papers were not known to have existed until after 1872, so far as any evidence goes.

The point we make is this: It crops out from a paper offered by plaintiffs to show Judge Maxwell's relationship to parties in a suit he had decided that these papers had not been known to exist thirty years although defendants had offered them with no marks whatever on them to indicate that they were ever a part of any official record, and certainly no marks to indicate that they were fastened together to make an official record at the time of the occurrences to which they relate, and nothing to show when and where they had been found. Relying solely for authenticity upon their having come from Scarlet in the morning's mail, counsel would have the court assume from that fact alone that they were official documents that had been in proper custody always and that raise on their face no suspicion of genuineness.

Relative to the explanation that after 1872 there was no occasion to search for these papers until the time of this suit, it is admitted by defendants that the conveyances to Gregory and Chase, through whom the Pensacola Company claim, were null and void on their face. That being the case, is it not strange that the title was not searched further back to see what could be found? Was there not every occasion for such search? If these papers were right there in the regular Spanish Archives in Pensacola, is it not peculiar they should never have been known of all the time from 1837 till after 1872? There was certainly every occasion for the Pensacola Company to strengthen its title, especially by papers so readily at hand as you are asked to assume that these were. If these papers were part of the regular Spanish Archives, and kept fastened together as it is contended they were fastened before 1817, it is particularly peculiar that their existence had not been known of sooner. No one could have looked for anything in this entire book as now made up without discovering what it related to.

Counsel criticise our contention that they should show the circumstances of the finding of these papers and that they came properly into the Spanish Archives, and say:

"That this would require in all cases an impossible quantum of evidence in order to introduce a paper as an official document. Under such a rule it would be impossible to prove any paper in the custody of the clerk of any court, except those placed there by himself and which he happened to recollect." (Pp. 23, 24, first brief of defendants.)

There is nothing to warrant such an assumption. It is always customary to place on papers something that will show the date of their filing. That something these papers totally lack.

Speaking of deeds filed in 1816 this court said:

"In view therefore of the habit of recorders of deeds which is universal and matter of common knowledge, to indorse upon the deeds themselves the fact and date of their registration, the certificates appearing on the deeds in question were competent and sufficient evidence of the fact that the deeds had been put upon record during the year mentioned in the certificates."

Applegate v. Lexington, etc. 117 U. S. 255.

2. That there appears on their face nothing to show them to be more than thirty years old, except that they refer to transactions occurring longer ago than that.

This is already partly discussed under the previous head, and we need only add that in the actual appearance of the writings themselves, there seems to be considerable variance, some of them looking very much more recent than others.

3. That they are not shown to have been in any proper sense a part of the regular Spanish Archives, and if such a part, they have not been for thirty years in proper custody.

It will be more convenient to discuss the latter part of this proposition first. It is not necessary to argue to this court that the antiquity of papers is not to be presumed from there coming in the morning's mail from Mr. Scarlet, the Surveyor-General, if they have not been continuously at least for thirty years in proper custody. Counsel for defendants in their first brief (p. 22) undertake to show what were the rights of the several custodians of the Spanish Archives and the devolution of their possession. They have digressed some from the record; but on the facts as they state them, it is made plain that these papers have not been always in proper legal custody.

By Section 9, Act of March 3, 1825, 4th Stat. L. p. 120, referred to, Congress authorized the President to appoint

an officer to be called the Keeper of the Public Archives in the Territory of Florida, who should keep his office at Pensacola in West Florida; and they produce a copy of Joseph E. Caro's appointment to that position. Presuming he held this position until his death (which occurred a year before the war, 1860, p. 39, Rec.), it does not appear who had the records after his death, until December 5, 1861. Then, according to Ex. C (p. 72, defendants' brief) the legislature of Florida declared that Filo E. de La Rua of the county of Escambia, and the clerk of the Circuit Court of said county

"be, and he is hereby authorized to hold, exercise and perform the duties of the office of Keeper of the Public Archives [where?] at the city of Pensacola, to which said office he has heretofore been appointed by the Governor and General Assembly of this State."

We will not stop to inquire how far a custodian provided for by the legislature of Florida after that State had seceded, was a proper legal custodian. Taking it for granted that he was, the legislature provided the office for no one but Filo E. de La Rua, and it provided that he should exercise and perform the duties of the office at Pensacola. Now Colonel Blount testified, referring to these records and to Mr. de LaRua:

"I think he took them away with him. I think they were taken away from Pensacola." (P. 302, Rec.)

He also states that Mr. Brainard had access to them at all times. Mr. Brainard was agent of the Pensacola Company (p. 47, Rec.). Now whether Colonel Blount is correct or not as to whether Mr. Filo de La Rua took the Spanish Archives with him when he went away from Pensacola, is immaterial. As a fact, Mr. de La Rua moved permanently away from Pensacola during the war. It is a well known fact that he lived for several years

during the war at Greenville, Alabama. While the record does not show this, we state it, as counsel on the other side have digressed to show the devolution of the possession of these documents. The law having provided that de La Rua should exercise the duties of his office at Pensacola, whether he had these papers with him while he was away or whether he left them behind him, is immaterial for they were in either event not in proper custody under the Florida act.

Certainly when he died all authority under that act was at an end and whoever held the papers from then until they passed into the custody of Scarlet was not the proper custodian. At his death, the date of which does not appear, counsel state that the archives passed to his son, John de La Rua. The letter of the Secretary of the Interior, offered as Appendix D (pp. 73, 74, defendants' first brief), refers to the Spanish Archives being, as late as 1895, in the possession of *Mr. John de La Rua and others*, and to the Surveyor-General having made demands for these papers and only received dilatory replies, and that there were remonstrances one by one of the defendants here against the removal of the papers from Pensacola. The Secretary then states that he is of opinion that these archives are held without proper legal authority, and concurs in the recommendation to have them removed to Tallahassee.

All this shows clearly that these papers have not been in such proper custody that they are entitled to admission in evidence upon being produced from the Surveyor-General without any evidence whatever of their age and genuineness.

On p. 74 of defendants' first brief, is attached copy of a receipt given by the Surveyor-General December 16, 1895, when, in accordance with the directions of the Acting Secretary of the Interior, the Spanish Archives were

finally delivered to the United States Surveyor-General at Tallahassee. He receipts for "the old Spanish Archives and papers enumerated below. He then enumerates books designated by letter and by volume and stating what each is a record of, and then "thirteen packages of what are commonly known as protocols." Now what is offered here and called by counsel Protocol A is one of these thirteen packages, and from the way in which the receipt is worded it certainly is not clear that these packages were considered, at the time the Spanish Archives were received into proper custody, as a part of such archives but rather as certain papers separate and apart from the archives proper. Certain it is they were not a part of those archives in the sense that these books of record were, and they should be subjected to a different measure, as to proof of their authenticity, from what the records officially kept in these volumes recognized as the Spanish Archives should be subjected to.

Under the following law what is here offered is certainly not the official record of a sale:

It is not a protocol within the recognized meaning of that word. These are offered as the original papers, while a protocol is a record of such papers made and kept by the officer.

"*Protocol.* (1) Civ. Law. The record made and kept by a notary of a contract or other act executed before him."
Standard Dictionary.

They should not be admitted as a record made up as counsel contend at the time of the occurrences to which they relate when judging from the character of fasteners with which they are put together, and the condition of such fasteners; they could not, as counsel would have us assume, have been put together by attaching each paper

as administration of the estate of Gabriel de Rivas progressed.

The fourth requirement as quoted by counsel (p. 24 of brief) to make a document admissible as an ancient document, is, as to the latter part, quoted incorrectly. The requirement the court laid down is:

"That possession of the land, if it be a deed to land embraced in it, should have accompanied it or followed it, *or some other corroborative evidence of its authenticity, freeing it from all just grounds of suspicion.*"

Now this is a very different requirement from the one counsel lay down, wherein they substitute for what is underscored, the following: "or that other facts and circumstances should accompany or follow its execution, showing a state of facts actually resulting from its existence."

As to requirement 4. It is not shown that possession of this land by defendants or any of their grantors ever accompanied or followed the alleged judicial sale to Gregario Caro. The Pensacola City Company had only null and void deeds, where any deeds are shown, and no good title. The possession of Fisher, the only possession relied on, was under a null and void decree.

"Mr. Chief Justice Marshall, delivering the opinion of the court said:

"The question now referred to this court differs from that which was decided in *Patton's Lessee* v. *Easton* (1 Wheat., 476) in this, that the defendant who sets up a possession of seven years in bar of the plaintiff's title, endeavors to connect himself with a grant. The sale and conveyance, however, by which this connection is to be formed, are admitted to be void. The conveyance being made by a person having no authority to make it, is of no validity, and can not connect the purchaser with the original grant. We are therefore of opinion that the law is for

the plaintiff, and that this be certified as the opinion of this court.

Lessee of Wm. A. Powell v. *Harmon*, 1 Peters, 242.

There is certainly no corroborative evidence of the authenticity of the papers by which this judicial sale is attempted to be shown, freeing them from all just grounds of suspicion.

In this connection we call attention to the alleged confirmation, by the commissioners to settle land claims, of the sale to John Chabeaux.

Much stress is laid in brief of defendants upon what they call the judicial sale of the estate of Gabriel de Rivas having been confirmed by the Commissioners to settle land claims in Western Florida, as showing that what they call Proctocol A is a genuine document. They also attempt to establish that it was genuine, by claiming that Joseph E. Caro, whose name is purported to be signed to the abstract of title, Exhibit 3, pp. 55, 56, Rec., recognized by signing that abstract that there had been such a divesting of the title. Mr. Caro is pictured as a scholar, familiar with Spanish law and the Spanish language, who would not have set his signature to a document attacking his own claim of title. The signature is not proved in such a way as to admit the abstract to evidence; it came from private hands and that it is not admissible has been fully discussed in our opening brief, pp. 29, 30. But assuming for the sake of argument that he did put his signature to this abstract, is it at all impossible that this scholar might not have known that the affixing of his official signature to an abstract of papers found in his office in no way bound him to the truth of what might be contained in the papers of which he gave an abstract. He may even have known that while Congress had given the commissioners authority

to give confirmation to claims that were not undefined in quantity and did not exceed one thousand acres, it had expressly provided:

"That such confirmation shall only operate as a release of any interest which the United States may have, and shall not be considered as affecting the rights of third persons." (3 U. S. Stat. L. p. 718, Act March 8, 1822, Sec. 5.)

And even have known that Congress, April 22, 1826, confirming what the commissioners had done, also provided:

"That the confirmation of all the said claims provided for by this Act shall amount only to a relinquishment forever on the part of the United States of any claim whatever to the tract of land so confirmed or granted." (P. 232, Rec.)

And even have known that even if the citation in the American Papers of State, p. 103, No. 46, quoted p. 231 Rec., showed, which it does not, a confirmation to John Chabeaux, that that could amount to nothing in view of the legislation just quoted.

There is another fact bearing upon the authenticity of what counsel styles Protocol A, offered to show a judicial sale, which is, that what is introduced purporting to be the proceedings before the commission in the claim of John Chabeaux, and the title papers and testimony exhibited in support thereof (see Ex. 17, p. 230), states that there was before the commission the original grant of title to Gabriel de Rivas (near top of p. 229, Rec.), and the next paper referred to is the copy of a mesne conveyance from Gregario Caro to Chabeaux, Fitzsimmons and Smith, skipping over entirely in the record of the title papers presented to the commission any evidence of a judicial sale of the estate of Rivas. This too when the law pro-

vided that the commission shall have access to all papers and records of a public nature relative to any land titles within said provinces and to make transcripts thereof. (Sec. 5, Act March 8, 1822, 3 Stat. L, 717.)

On the same page, 229 Rec., it is stated that Joseph E. Caro proved the signature to the foregoing title papers; the only papers offered except the grant to Gabriel Rivas, were copies. Now he could not have proved the signature to copies, so what he proved signature to must have been the original grant. A natural thing for him to do for he was directly interested in having this commission decide that the grant from Spain had been valid; otherwise the property belonged to the United States. Any other papers bearing on whom title might be shown in were immaterial to the issue there involved, under the authority of the commission, as has already been cited, limiting the effect of its confirmations to a release of the interest of the United States, and providing that its confirmation should not be considered as affecting the rights of third persons.

If these papers now produced were part of the Spanish Archives at that time, but recently after it is alleged this judicial sale took place, is it not strange that they were not produced? Is it not also an evident fact that this abstract was not genuine, that there has been made to appear an abstract of that which by what is offered as the original proceedings, does not appear? *i. e.:*

That in the abstract of title offered as having been given by Joseph E. Caro it appears that the evidence of this judicial sale was put before the commission, when what is offered as the record itself of the proceedings does not show that to have been the case.

V. Plaintiffs had Prior Possession and Defendants can not set up Outstanding Title.

Defendants contend there was no possession of this tract from the death of Gabriel de Rivas to 1867. Previous to 1867 it is claimed that the Pensacola City Company had exercised acts of dominion over the property. What is relied on to show acts of dominion is that Chase and his associates caused to be prepared by George E. Chase, and lithographed, a map of their holdings in Pensacola, 1835 to 1837, which included the land in controversy (see bottom p. 10, defendants' first brief), and that by Schedule B. attached to the purported deed from Chase, in 1837 there were sold some 1,149 lots (see also p. 10, defendants' first brief); and they refer (p. 34) to the fact that we forget a syndicate was attempting to acquire a large part of Pensacola. We do not forget it, but we are inclined to question the syndicate's methods of acquiring property. There are no lots and blocks shown on the map said to have been attached in 1837 to the deed from Chase to the Pensacola City Company, the map that shows, by having marked in yellow the lands claimed by the Pensacola Company. The other larger map made by Chase and showing lots and blocks and giving numbers, apparently is a map of all the lands round about, and we do not know, and doubt if counsel for defendants could tell us, whether the lots referred to in Schedule B. were on this Rivas tract or not.

If they were on it then they were expressly excepted out of the conveyance of Chase to the Pensacola Company, and that Company can not claim to have exercised dominion by virtue of such sale. If none of these lots were in the Rivas tract such sale does not show the exercise of dominion over that tract. The language of the conveyance is :

"saving and reserving thereout the several lots mentioned in Schedule marked B., hereto annexed, which schedule has been signed by the said William H. Chase and forms part of this indenture, and is to be recorded therewith." (P. 323, Rec.)

Now both the Chase map and the map relied on to supply the deficiency of description in the deed, are before the court, and the deed states that both are to be recorded; but we can find nothing on the maps to show that they ever were recorded. There is testimony that Chase's map was a recognized map, but that there were other recognized maps. Colonel Blount says the map used to hang in his law office (p. 302, Rec.). He considered his connection with the Company severed when the war commenced. Apparently the stock company slumbered in obscurity from 1837 to 1870. It is contended that A. V. Caro recognized this dominion by accepting employment to look after and care for this land for the Pensacola Company, as shown by the records admitted of a suit brought by him in which he recovered from the Company $600 for caring for land and for papers during the war.

On p. 8 of second brief of defendants it is stated that this record showed that he sued for taking care of *all* the lands of the defendants. We have looked carefully through the record of this suit (pp. 39–51, Rec.) and there is nothing in the pleadings or in the evidence in the case which warrants this assertion. This suit was brought in 1869, as shown by the complaint (p. 43, Rec.) for taking care of and attending to landed interests in the city of Pensacola, consisting of lots of land, from May, 1862, until September 9, 1865. The contract under which Caro sued must of course have been made prior to 1862.

Colonel Blount testifying (p. 301, Rec.) as to this transaction, which had occurred 40 years before, states that he knows of Caro's connection with looking after the land.

That Mr. Brainard was the agent of the land and employed Caro to keep off trespassers. That included the Chabeaux tract. Now of this tract Colonel Blount testifies (p. 302, Rec.):

"I am familiar with the Rivas tract only so far as my connection with the Pensacola City Company. I knew it as the Chabeaux tract. There were no lines there, only a large map made by Geo. Chase, a brother of Major Chase, and it hung in my office; and it was mapped off in blocks and lots, and all the lots were previously sold before Brainard came here and before I took charge as attorney."

Now it is quite clear that Colonel Blount when he says that he knew that the employment by Brainard included the Chabeaux tract, is merely going by his knowledge from this map. He says all these lots on the map were sold previous to Brainard's coming there. He says it was Brainard who employed Caro.

It is quite evident that there was never any laying off of this land into lots except on paper; for the following witnesses all testify that there were no streets of any sort there about 1869 or 1870: Gonzales (p. 67, Rec.), Leggett (p. 70, Rec.), Robinson (p. 71, Rec.), Bicker (p. 73, Rec.), Beck (p. 30, Rec.), Truat (p. 83, Rec.).

It was for attending to landed interests consisting of lots of land that Caro sued.

This all shows how little there is even in the claim of the exercise of dominion over the property; but if such exercise was established it could not affect the question of possession.

As a consideration of that question, we can start with the claim of counsel on p. 15 of their brief, that the first possession of the tract was in 1867, by Ephriam Pleasants as a tenant of the Pensacola City Company. Ephriam Pleasants tells (p. 68, Rec.) how he got on the tract and

how he consulted Colonel Blount and Mr. Brainard. He states, though, that he leased from Caro and his wife, and never did pay any one else, and that he stayed on the tract up to 1894, when he was put off by Fisher (p. 69, Rec.). Colonel Blount was a witness and says nothing about Pleasants having leased from him. From Pleasants' whole statement it seems he looked up Colonel Blount and Mr. Brainard because he was trying to find somebody who would give him authority to put his house on this land. When he found the person in authority as far back as 1870 (Caro), he stuck to him until he was put off the land by Fisher in 1894. Yet counsel asked this court to construe this as a taking away by Caro, without notice, of one of the Pensacola City Company's tenants.

Counsel rely upon the Supreme Court of Florida having decided that the possession of this land was mixed from 1869 to the possession by Fisher, but it must be borne in mind that in making these decisions the Supreme Court was affirming null and void decrees rendered by relatives to the parties complaining—Judges Maxwell and McClellan—where its jurisdiction was purely appellate. This court is not bound by the decisions of the Supreme Court of Florida, and furthermore it has the facts before it.

Counsel seem to rely much more (see p. 19 of their first brief) upon the number of times they say this question has been decided favorably to them, than they do upon the merits of their present case. They do not even try to show that the decree of Judge McClellan was valid, which is the only thing that gave the possession they set up as adverse, dismissing that contention (p. 55 of their brief) with the statement that it is immaterial whether it was valid or not.

We do not consider that the evidence in this case bears out the contention that the possession after Caro moved on the land, 1869–1870, was scrambling. The cases cited

on p. 19, where this question has been decided, so far as this record sheds light on what was involved, confirm the *fact that Caro was all the time, except as interfered with by* Receiver Fisher, in possession for himself and as agent of the other heirs. The first case mentioned, that of an action of ejectment by *J. E. Caro et al. v. C. M. Hooper*, so far as reference to it in the record sheds light on the subject, shows that it involved only a small part of the land; and we do not know what Hooper's defense may have been; and A. V. Caro tells (pp. 38, 39, Rec.) that some of the material papers were lost in the case, pending decision.

The next case cited, *Duval* v. *Pensacola Co.*, appears to have been (p. 62, Rec.), an attempt to obtain an injunction against the Pensacola Company.

Now the next suit referred to was an action by the *Pensacola Company* v. *Caro*. Whatever was involved, it does not seem to have been effective, and it was followed by two other suits, both brought by the Pensacola Company and both taken to the Supreme Court, one before Judge Maxwell and the other before Judge McClellan, relatives of complainants; and the Company never really seems to have gotten any hold of this property until they got Fisher appointed as receiver.

Counsel would have the court believe that the Pensacola City Company all along from 1869 to 1889, when the receiver was appointed, was renting to tenants on this property, and that Caro was merely a kind of interloper, meddling with these tenants. The evidence does not establish such a condition of facts. Mr. Fisher does not undertake to say when he took charge, who was renting from Caro and who was not. He deals only in generalities. He makes no attempt to mention persons (pp. 87, 88, Rec.). At the time of the final decree he had been receiver two years and he had collected $249, and there were a number of persons had refused to pay

him ; and the court made an order that they should pay to him. Because of this order it is not to be inferred that those persons in arrears had previously been tenants of the Company and not of Caro, for all persons were ordered to pay to the receiver.

There is nothing to show that these persons were tenants of the Pensacola City Company. Mr. Tate, who testifies as to having bought some of this land from the Pensacola City Company, refers to finding a man on it at the time claiming under Caro. That he put him out. Also put Andrew Lennox out (p. 303, Rec.). He says he remembers a man by the name of Clark who was building on the tract and that the property afterwards went into his possession and he had to put Clark out. He had to be put in by the sheriff. Clark had built his house under terms with Caro (p. 304, Rec.).

Now this is the defendants' testimony, and it points to Caro having exercised a very positive sort of possession and control. Now the specific acts to show tenancy come from the plaintiffs' testimony :

Manuel Gonzales : Was 75 years old. Had been residing in Pensacola all of his life. Knew the property known as the Rivas tract, and remembered after the war when it was taken in possession of by A. V. Caro, and did not know of any of that property being controlled by the Pensacola City Company. There was no evidence of streets on the tract of land when Caro went there. It was a regular wilderness (p. 67, Rec.).

Lennox : While he claims he went on the tract by permission of Blount and Young, never paid rent to any one but Fisher. This payment of rent must have been after the receivership (pp. 69, 70, Rec.).

Alphonse Villeneuve: 63 years old and had lived on the Rivas tract thirty years next August. Caro gave him

the right to live there. Fisher threw him out five years ago (p. 70, Rec.).

W. E. Leggett: Had lived on the Rivas tract. Mr. Caro put him and his mother there to see that no one trespassed. Was there somewhere about a year or two, and this was about 30 years ago. He knew of the land since and knew Mr. Caro had lived there since then. It was a howling wilderness when he lived there (pp. 70, 71, Rec.).

Alexander Robinson: Had lived there. Did not exactly recollect the year but it was somewhere about 1870. Went there through permission of Mr. Caro, and lived there near 27 years. When he went there, there were no streets laid off. The biggest part of it was woods, a regular forest (p. 71, Rec.).

William Ighrom: Went on the tract through Mr. Caro about '70 or '71, after the war, and stayed there until Mr. Fisher was appointed receiver. When he was not there, had tenants in his house; put them in the house; they accounted to him and he accounted to Caro, (pp. 73, 74, 75, Rec.).

Vice Beck: Had lived on it over thirty years. Mr. Caro told him he could go there, and put him up a little house and stay there. He put up his house and stayed under Caro's possession until Mr. Fisher made him pay him. Was never molested until Mr. Fisher came. When he went there there were no signs of streets; it was all woods. There were only a few shanties around (p. 75, Rec.).

Frank Truart: Had known the tract for thirty years. Its condition thirty years ago nothing but merely woods and paths running through it; they were country roads, one went to his house; he lived close by the property; only Caro's house there thirty years ago, the house he

lived in. Knew Caro had been claiming the property about thirty years (p. 83, Rec.).

J. W. Frater: Resided in Pensacola 23 years. Knows the place designated as the Rivas tract and bought five lots of that tract from A. V. Caro and sold them to William Fisher (p. 83, Rec.).

A. V. Caro: Now A. V. Caro's testimony is that he is still living on this tract and has lived on it ever since 1869. That he represented the interest of the heirs and had a power of attorney from them. That the acts of ownership he performed were for himself and for the heirs, and that he just controlled the whole tract, leased, rented and cut the wood that he wanted. That he had had plenty of tenants on the tract. That Mr. Fisher drove off a great many of these tenants (p. 33, Rec.). He took charge in 1869 or 1870 and controlled and leased and collected the rents up to 1879 (p. 33, Rec.). This was the time that he was enjoined by Judge Maxwell. After that time he still exercised control, getting around this decree by leasing through his wife (p. 37, Rec.).

As to being enjoined by Judge Maxwell in 1879, it appears that upon appeal to the Supreme Court of Florida that court affirmed the decree, in 1883, as to A. V. Caro, but reversed it as to the other parties defendant, viz: the other heirs; because no service had been made upon them. (Also see 19 Fla. 766.) This accounts for Caro having to take indirect means to represent these heirs from 1879 on.

Now there are two circumstances relied on to attack the claim of the Rivas heirs, to which we will refer:

1. That Caro was prevailed upon about 1870 to pay $50 for a quit-claim deed from Chabeaux. Of this Caro says:

"The reason why I wanted to buy the claim of Chabeaux, I thought by getting rid of this fellow, if he had any rights whatever it would prevent trouble. I had never heard of him before that time." (P. 37, Rec.)

Now these defendants claiming this land with the conveyances to the Pensacola City Company, admitted on their face to be null and void conveyances, are hardly in position to criticise A. V. Caro for paying out $50 to get rid of a man who was asserting some claim against him.

2. That under an agreement with Fisher, Caro moved from one part of the tract to another.

Now A. V. Caro, after Fisher got in as receiver, to prevent himself from being put off the property entirely (see Fisher's testimony, p. 307, Rec.) made an agreement with Fisher to move from one part of the land on which he was living, to another portion of it. This was in May, 1897, after Judge McClellan had appointed Fisher as receiver. That he was powerless to do anything else than either to get off entirely or consent to Fisher's terms is too apparent for argument.

Defendants' counsel state:

"There is no testimony of any witness of any *possessio pedis* by any person claiming under Gabriel de Rivas, or under the judicial sale to Gregario Caro, of any portion of this property from the time of the death of Gabriel de Rivas to the year 1869" (pp. 12–13, defendants' first brief).

To sum up the situation.

From that time on to the appointment of Fisher as receiver, 1889, defendants do not claim actual possession in themselves but that the possession was mixed (middle of p. 16, first brief). Our contention is: That the first time after the death of Gabriel de Rivas that there is any attempt to dispute possession in his heirs,

and any occasion for possession to be shown, viz: about 1870, that A. V. Caro is there, living upon the tract and claiming possession for himself and the other heirs, under the grant to his ancestor, Gabriel de Rivas, from the Crown of Spain, which we contend constitutes a continual possession under that grant to that time in the Rivas heirs. That that possession continued in the heirs through A. V. Caro as one of them and as agent for the others, up to the time that defendants set up their claim that there was adverse possession in Fisher, as receiver, A. V. Caro exercising, as is amply proved, acts of ownership and control over the entire tract.

The Rivas heirs have never claimed by lots and blocks, as these defendants claim, who are trying to set up adverse possession, but have always claimed the tract as a whole, and they have proved themselves to have been in actual possession of part of it and in the constructive possession of the whole of it up to the time that adverse possession is set up; and that this constitutes such a prior possession as defendants can not defeat by attempting to show an outstanding title in another. Even if they could successfully show that there had been a judicial sale under a will of Gabriel de Rivas in 1817, divesting this title out of plaintiffs, still these heirs went in possession in 1870, through Caro, claiming for himself, and as agent of the other heirs, under color of title, *i. e.*, a written instrument admitted by all parties to have been valid—the grant from the Crown of Spain to their ancestor. The Florida statute of limitations, of seven years, (Exhibit E, p. 75 of their first brief) would have given to the Rivas heirs a title by prescription long before the title defendants set up as adverse, in Fisher, could ever have begun to run. The null and void decree of Judge McClellan, declaring Fisher permanent receiver, was not until January 17, 1889, about twenty years after the

time Caro went there, which was either in 1869 or 1870. There is nothing to prohibit an action of ejectment being founded upon a title by prescription. *Toltic Ranch Co.* v. *Cook*, 191 U. S. 538; *Toltic Ranch Co.* v. *Babcock*, 191 U. S. 542.

From whatever way you look at this case, plaintiffs had a prior possession at the time that a possession adverse to them is claimed by defendants to have commenced running, and against this defendants can not set up an outstanding title.

"Generally speaking, the presumption is that the person in possession is the owner in fee. If there be no evidence to the contrary, proof of possession, at least under a color of right, is sufficient proof of title. Therefore, when in an action of ejectment the plaintiff proves that on the day named he was in the actual, undisputed and quiet possession of the premises and the defendant thereupon entered and ousted him, the plaintiff has proved a *prima facie* case, the presumption of title arises from the possession, and, unless the defendant proves a better title, he must himself be ousted. Although he proves that some third person, with whom he in no manner connects himself, has title, this does him no good, because the prior possession of the plaintiff was sufficient to authorize him to maintain it as against a trespasser, and the defendant, being himself without title, and not connecting himself with any title, can not justify an ouster of the plaintiff. This is only an explanation of the principle that the plaintiff recovers upon the strength of his own title. His title by possession is sufficient, and it is a title so far as regards a defendant who only got into possession by a pure tort, a simple act of intrusion or trespass, with no color or pretense of title."

Bradshaw v. *Ashley*, 180 U. S. 63, 64.

VI. Contention that Proper Exceptions Were Not Made in the Court Below.

In some instances while admitting the soundness of our contentions counsel question whether sufficient exception was taken in the court below for this court to pass upon those contentions. Much of the second brief of defendants is devoted to this character of argument, trying to limit the exceptions taken to what they designate Protocol A. As to the record evidence counsel claim sufficient exception was not taken to, it will be seen that as to exceptions set out (pp. 298–300) it is stated [redacted]

"The foregoing grounds of objections are made to and apply to all and consecutively, to the offers heretofore made consecutively by the defendants, which documents offered is herein included and made a part of this bill of exception."

So the record shows that all the papers were excepted to; and while the exceptions may be more inartificially stated than learned counsel for defendants would have stated exceptions, they are not lacking in directness, and the able counsel can hardly contend that they were mislead as to their meaning.

The claim generally made is that there was no exception specific enough to take advantage of in this court to papers offered as originals without being properly proved, or as copies without being properly proved and certified to as correct copies. It will be seen that in the objections stated, as above quoted in the record, to have been taken to all the offers heretofore made consecutively, etc., that there was an exception (p. 229, Rec.) to there being no proof of the authenticity of said documents.

"Authenticity.—1. The state or quality of being au-

thentic, either (1) as being authoritative or entitled to acceptance, or (2) as being true in accordance with fact.

"2. The state or quality of being genuine, or of the origin and authorship claimed."

Standard Dictionary.

"1. The quality of being authentic or of established authority for truth and correctness.

"2. Genuineness; the quality of being genuine, or not corrupted from the original."

Webster's Dictionary.

Pages 2 and 3 of defendants' first brief contends for the insufficiency of the objection:

"That the court erred in refusing to recuse himself,"

claiming that there is nothing to show that the court was incorrect in its rulings alleging that the assignment of error attacks only the result of the judge's action, not his method in arriving at such result. This court will readily appreciate the delicacy of the position in which it places counsel, to have to suggest to a judge that he is disqualified because of a member of his family being interested in the litigation, and that it is a still more delicate matter to be insistent as to his disqualification when he declines to hear testimony and announces his determination to sit anyhow. The Legislature of Florida seems to have appreciated the situation very fully, for it has passed this law:

"*Retirement of Disqualified Judge:* The judge so disqualified shall retire of his own motion and without waiting for an application to that effect."

Fla. R. S. Sec. 969, p. 354.

Now as to the contention of counsel for defendants above referred to, it need only be said here that when the judge refused to recuse himself he at the same time re-

fused to hear witnesses. He made a statement from the bench that he was not interested, closing with his denial of the petition asking permission to offer testimony, which of course gave plaintiffs no opportunity whatever to introduce witnesses.

The judge afterwards of his own motion put on file an affidavit, from an outsider, to the effect that he was not interested, but this was without any opportunity to the plaintiff either to cross-examine or to offer evidence in rebuttal.

H. A. HERBERT,
BENJAMIN MICOU,
E. T. DAVIS,
SIMEON S. BELDEN,
Counsel for Plaintiffs in Error.

January 26, 1905.

FILE COPY.

Office Supreme Court U. S.
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JAMES H. McKENNEY,
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IN THE

Supreme Court of the United States.

October Term, 1904.

FLORIDA McGUIRE and MATILDA CARO, *Plaintiffs in Error,*

v.

WILLIAM A. BLOUNT, WILLIAM FISHER, PENSACOLA CITY COMPANY, *et al. Defendants in Error.*

No. 6

Supplementary Brief for Plaintiffs in Error.

H. A. HERBERT,
BENJ. MICOU,
E. T. DAVIS,
SIMON S. BELDEN,
Counsel for Plaintiffs in Error.

October 10, 1905.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1904.

FLORIDA McGUIRE and MATILDA CARO,
Plaintiffs in Error,
v.
WILLIAM A. BLOUNT, WILLIAM FISHER, PENSACOLA CITY COMPANY, *et al.*
Defendants in Error.
} No. 134.

Supplementary Brief for Plaintiffs in Error.

Our first brief in this case was filed in January, 1905, and defendants in error filed, shortly after, a brief and supplemental brief, and have within the last few days filed a second supplemental brief which states, "assuming that the court will consider any suggestions filed before the hearing of the cause, we present," etc. Acting on a like presumption we desire to call the attention of the court to a certain phase of this case which, though not alluded to by the defendants in error, we believe the court ought to pass upon, that this litigation, which has been long and continuous, may be as nearly settled as possible by the decision that this court renders. Should any question be left unpassed upon, and that question be raised on a new trial in the court below, there would be no way to get the case again before this court save by a *certiorari* after final decision by the Cir-

cuit Court of Appeals, such as was granted in the present case.

When our last brief was filed there was pending before this court application for a writ of error to remove here the case of *J. B. Caro et al.* v. *W. H. Davidson et al.* from a decision of the Supreme Court of Florida denying a petition that had been made to set aside the decree of Judge McClellan, which decree is involved in the present case; and on March 13, 1905, this court in an opinion rendered by the Honorable Chief Justice, dismissed that application upon the ground that no definite issue as to the validity of the statute in question was distinctly deduced from the record, the court saying:

> "whether the act referred to was applied as asserted in contravention of the Constitution of the United States we are not called on to consider, since we do not find that any federal question was so raised, on the petition or in the proceedings thereunder, at the proper time and in the proper way, as to give us jurisdiction under Sec. 709 of the Revised Statutes."

The decree of Judge McClellan comes before the court in the present case in the following way: The defendants offered that decree in evidence (pp. 88–91, Rec.), and the plaintiffs proved without objection from the defendants, that C. C. Younge, one of the plaintiffs, was a brother-in-law of Judge McClellan, who rendered the decree (pp. 57, 66, 76, and 82, Rec.). This to show that the decree was under the statutes, and the decisions which we cite pages 20–27 of our first brief, null and void. Section 970, R. S. of Fla. p. 354, there cited was the law when Judge McClellan rendered his decree, which section provided that the decree of a judge disqualified shall be of no force and validity and shall be null and void.

Previous to the bringing of this suit, viz: May 30, 1901, the Legislature of Florida passed the following act:

"Sec. 970. *Effect of his action:* Any and all judgments, decrees and orders heretofore or hereafter rendered in the causes where the disqualifications appear of record in the cause, shall be void, but where the disqualification does not so appear, they shall not be subject to collateral attack."

Acts of Legislature of Florida, 1901, p. 39.

We desire to call the court's attention to certain authorities to substantiate the following proposition: That if the decree rendered by Judge McClellan was, when rendered, null and void, the Legislature of Florida was powerless to give it validity either by declaring that all decrees heretofore rendered should only be void, where the disqualification appeared of record, or by shielding from collateral attack decrees that were void where the disqualification had not been of record.

If the act of 1901 was from the date of its passage and its retroactive words intended to apply to the judgment of Judge McClellan it was "a bald attempt to take by legislative act one man's property and give it to another.

"The want of the summons and return, were, by an express provision of the statute, required to give the court jurisdiction of the persons of the non-resident defendants. Without this formality, they were not properly before the court, and all its proceedings as to them were void. And the first question to be considered is, whether the finding of the jury, which was void in law as to them, could be rendered valid and binding upon them by the passage of the act of the 12th February, 1857. If it was competent for the Legislature to make a void proceeding valid, then it has been done in this case. Upon this question we can not for a moment doubt or hesitate. They can no more impart a binding efficacy to a void proceeding than they can take one man's property from him and give it to another. Indeed, to do the one is to accomplish the other. By the decree, in this case, the will in question was declared void, and,

consequently, if effect be given to the decree, the legacies given to those absent defendants by the will are taken from them, and given to others, according to our statutes of descents. Until the passage of the act in question, they were not bound by the verdict of the jury in this case, and it could not form the basis of a valid decree. Had the decree been rendered before the passage of the act, it would have been as competent to make that valid as it was to validate the antecedent proceedings, upon which alone the decree could rest. The want of jurisdiction over the defendants was as fatal to the one as it could be to the other. If we assume the act to be valid, then the legacies, which before belonged to the legatees, have now ceased to be theirs, and this result has been brought about by this legislative act alone. The effect of the act upon them is precisely the same as if it had declared, in direct terms, that the legacies bequeathed by this will to these defendants should not go to them, but should descend to the heirs at law of the testator, according to our law of descent. This it will not be pretended that they could do directly, and they had no more authority to do it indirectly, by making proceedings binding upon them which were void in law."

McDaniel et al. v. *Correll et al.* 19 Ill. 227, 228.

"Nor can the Act of Assembly of April 6th, 1870, Pamph. L. 960, entitled 'An Act to validate certain proceedings in partition,' have any effect upon the title of Lewis Richards. Without pausing to inquire into the soundness of the objection which has been made to the title, as not being in accordance with the constitutional provision which requires that 'the subject shall be clearly expressed in the title' (first amendment of 1864), we hold that the act itself is unconstitutional, and void, as an infringement of the inhibition contained in the 9th Section of the declaration of rights, Art. IX. of the Constitution, that no person 'can be deprived of his life, liberty or property, unless by the judgment of his peers or

the law of the land.' What is this act but a mere bald attempt to take the property of A. and give it to B.? At the date of the passage of the act, Lewis Richards had an undivided share—a fourth part of the land in question—and by the legislative fiat validating these proceedings in partition, which the law then pronounced a nullity as far as his estate was concerned, this undivided share is divested from Lewis Richards and vested in Griffin Rote, who figured as a trustee in the partition. The preamble to the act shows, indeed, that the Legislature was deceived; for it recites that the writ, notices and rules in the proceeding were served on Griffin Rote, 'a trustee of the estate appointed by the said Orphans' Court.' Literally this was perhaps true, but doubtless the Legislature inferred, as they naturally might, that the estate of Lewis Richards was in trust, and Griffin Rote a lawfully appointed trustee. Nor do they appear to have been informed that it was the title of Griffin Rote, the trustee, which they were asked to validate; if they had been, probably they would have inquired more particularly into the circumstances. The act declared valid the title of Samuel Richards, the purchaser at the Orphans' Court sale, and his heirs and assigns. But had the title of the act been full and particular; had the preamble recited the true difficulty, the entire want of authority in Griffin Rote to represent Lewis Richards; and had the enacting clause confirmed the title of Griffin Rote, desired under the proceedings, the act would still have been ineffectual for the purpose for which it was designed. It was not a case in which the mere irregularity of a judgment or a formal defect in the acknowledgment of a deed was cured, where the equity of the party is complete and all that is wanting is legal form. Such were *Underwood* v. *Lilly*, 10 S. & R. 97; *Tate* v. *Stooltzfoos*, 16 S. & R. 35; *Satterlee* v. *Matthewson*, 16 S. & R. 191; and *Mercer* v. *Watson*, 1 Watts, 330. On the contrary, it is very clearly within the principle of *Norman* v. *Heist*, 5 W. & S. 171; *Greenough* v. *Greenough*, 1

Jones, 489; *De Chastellux* v. *Fairchild*, 3 Harris, 18; *Werges* v. *Dentler*, 9 Casey, 495; *Bagg's Appeal*, 7 Wright, 512; *Schaffer* v. *Erea*, 4 P. T. Smith, 304; *Shark* v. *Brown*, 11 P. T. Smith, 320. These cases abundantly sustain the position that an act of the Legislature can not take the property of one man and give it to another, and that when it has been attempted to be taken by a judicial proceeding, as a sheriff's sale, which is void for want of jurisdiction, it is not in the power of the Legislature to infuse life into that which is dead, to give effect to a mere nullity. That would be essentially a judicial act, to pronounce judgment—to usurp the province of the judiciary—to forestall or reverse their decision."

Richards v. *Rote*, 68 Penn. St. 255–256.

"As we have seen, the order of the Probate Court directing the sale by Forster and the sale of the 19th of September, 1853, were *void*. If prior to the enactment of April 2, 1866, the validity of the sale in question had been presented to this court, even in a collateral proceeding, we must have held, both upon reason and authority, that it transferred to the purchaser no estate in the land. Had the District and Supreme Court in fact decided the sale by Forster to be void, and the Legislature had then enacted that the judgment should be set aside, and the validity of such sale again be made the subject of judicial inquiry, the interference by the Legislature with a distinct department of the government would be palpably apparent to every mind. In every case, and the instances are few, in which such a law has been passed upon by the courts of a State having a written constitution, it has been declared unconstitutional; even where there was in the written constitution no express provision prohibiting the Legislature from exercising judicial power. But had the Legislature gone one step further, and, by special enactment or by general law covering the case, commanded the courts which had rendered a judgment in favor of a plaintiff, in an action based on the in-

validity of the Forster sale, to set it aside and to enter a judgment for the defendant, such arbitrary attempt would, at once, have been recognized as an abuse not to be tolerated under our free constitution of government.

"The circumstance that the validity of this very order of sale had never been before the courts, does not make the statute (assuming that it applies to such order) any the less an effort summarily to dispose of a question purely judicial, or to deprive citizens of their property 'without due process of law.' This last expression is the equivalent of the 'law of the land'; a law which, as said by Mr. Webster in the *Dartmouth College* case, 'hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial.'

"If we assume the act to have validated the Forster sale (and order of sale), then the lands which up to the date of the act—April 2, 1866—belonged to the heirs of Nathaniel M. Pryor, from that date became the property of other persons, and this transfer was accomplished by the legislative act alone. And, even if we could indulge the fiction that the parties to be deprived of their estates had notice of the intended act, and a hearing and opportunity to produce witnesses, or to show cause why the act should not be passed, this would have been a species of trial, and the exercise of judicial power by the Legislature."

Pryor v. *Downey*, 50 Cal. 405–406.

"Could it, by statute, give vitality to the decree of a court which was absolutely lifeless and void for want of jurisdiction over the person against whom it was rendered?

"The Legislature may, by statute, validate judicial proceedings, when the statute is only in aid thereof and tends to support the same, by precluding parties from taking advantage of errors or irregularities which do not affect their *substantial rights*. But it can not, by retrospective legislation, give validity to previous judicial proceedings which were void for

want of jurisdiction over the parties. Two reasons may be assigned for this inhibition: *First* because it would be an exercise of judicial power not contemplated by our Constitution — see Art. III; *second* because it would operate to deprive parties of their 'day in court' property rights might be divested without notice to those interested, and without giving them the opportunity to be heard. See § 25, Bill of Rights; *Mason* v. *Eldred*, 6 Wallace, 239; Cooley on Const. Lim. § 107, and cases cited in notes. * * * If it was competent for the Legislature to make this declaration, then it was competent for it to have declared that to be a judgment which before was no judgment, and binding upon the party against whom it was rendered when before he was not bound at all; for such is the direct result. It is a proposition not to be discussed at this day, that the Legislature has no such power. *Nelson* v. *Rountree*, 23 Wis. 370; See *Pryor* v. *Downey*, 50 Cal. 403; Wade on Retroactive Laws, § 164."

Israel v. *Arthur, Adm'r, et al.* 7 Colo. 10–11.

In the following case some of the court held that the decisions the Legislature had authorized to be reheard were valid and some that they were not. From both points of view the court was of opinion that the Legislature could not authorize the cases to be reheard. We give both views.

"I conclude, therefore, that upon reason and authority, 1st, that the decisions of the late Court of Appeals were valid, judicial acts; and, 2d, That being valid, the act of the Legislature, authorizing this court to re-hear and review them, 'to affirm, set aside and annul the same, as to this court shall seem proper,' is plainly an invasion of judicial authority, which is unconstitutional and void."

Griffin's Exr. v. *Cunningham*, 20 Grat. (Va.) 55.

"The question is, whether a statute designed to give va. .ity to such void decrees, is not the exercise of judicial power, and, therefore, unconstitutional and

void. Nothing, it seems to me, can be clearer than this.

"I submit, therefore, that it is clear, that if the decrees before us were void when rendered, from the want of authority in those who rendered them, to render any decree whatever, they are void now, as they were at first, because it was not in the power of the Legislature to make them valid by confirmation."

Idem. p. 111.

Other cases strongly in point upon this subject are *Denny* v. *Mattoon*, 2d Allen, 361; *In re Herman J. Christiansen*, 17 Utah, 412.

We find absolutely no authority that holds contrary to the line of decisions referred to above.

The following cases make it plain that a void judgment can always be attacked whether directly or collaterally:

"And a judgment by confession, rendered by a justice who is related to the creditor within the fourth degree of affinity, is void for want of jurisdiction. *Hill* v. *Wait*, 5 Verm. R. 124. Where the justice is interested, or is related to either party as above, or shall have been of counsel, the statute prohibits him from acting judicially. These cases, then, are excepted out of the ordinary jurisdiction of a justice, and over them he has no jurisdiction. A long succession of decisions from an early date has settled that a judgment of an inferior court which has no jurisdiction over the subject-matter is *coram non judice*, and void. *Case of the Marshalsea*, 10 Co. 68, 76 (a); and the judicial officer can derive no protection from it. *Perkins* v. *Proctor*, 2 Wils. 582; *Branwell* v. *Penneck*, 7 B. & C. 536; *Smith* v. *Knowlton*, 11 N. H. 198; *Savacool* v. *Boughton*, 5 Wend. 170; *Elliott* v. *Piersoll*, 1 Pet. 328; *Wood* v. *Peake*, 8 Johns. 69; *Butler* v. *Potter*, 17 Johns. 145; *Adkins* v. *Brown*, 3 Cowen, 206. * * * Upon this point the authorities are consistent with each other; and they settle that the want of jurisdiction in a court rendering a

judgment may be shown collaterally, whenever any benefit or protection is sought under the judgment. *Putnam* v. *Nam*, 3 Wend. 202; *Elliott* v. *Piersoll*, 1 Pet. 328; *Taylor* v. *Bryden*, 8 Johns. 173; *Rose* v. *Himely*, 4 Cranch, 241, 269, 270."

Russell v. *Perry*, 14 N. H. 155–156.

"It is argued that the Circuit Court of the United States had no authority to question the jurisdiction of the County Court of Woodford county; and that its proceedings were conclusive upon the matter, whether erroneous or not.

"We agree that if the County Court had jurisdiction, its decision would be conclusive. But we can not yield an assent to the proposition that the jurisdiction of the County Court could not be questioned, when its proceedings were brought, collaterally, before the Circuit Court. We know nothing in the organization of the Circuit Courts of the Union which can contradistinguish them from other courts in this respect.

"Where a court has jurisdiction it has a right to decide every question which occurs in the cause; and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other court. But, if it act without authority its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences are considered in law as trespassers.

"This distinction runs through all the cases on the subject; and it proves that the jurisdiction of any court exercising authority over a subject may be inquired into in every court when the proceedings of the former are relied on and brought before the latter by the party claiming the benefit of such proceedings."

Elliott et al. v. *The Lessee of Piersoll et al.* 1 Pet. 340, 341.

"The want of jurisdiction in a court rendering a judgment, may be shown collaterally whenever any benefit or protection is sought under the judgment. It renders the judgment *coram non judice* and void; and in case of a limited and special jurisdiction, the magistrate and all others concerned in enforcing the judgment would be trespassers. (*Bigelow* v. *Stearns*, 19 Johns. R. 39; 15 Johns. R. 121; *Elliott* v. *Piersoll, & others*, 1 Pet. U. S. R. 340)."

Putnam v. *Man*, 3 Wend. 205.

H. A. HERBERT,
BENJ. MICOU,
E. T. DAVIS,
SIMON S. BELDEN,
Counsel for Plaintiffs in Error.

October 10, 1905.

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Clerk

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1904.

FLORIDA McGUIRE and MATILDA CARO, *Plaintiffs in Error*,
v.
W. A. BLOUNT, WILLIAM FISHER, PENSACOLA CITY COMPANY, *et al.*, *Defendants in Error.*

No. 134.

MOTION.

The court having remanded the said cause to the calendar for oral argument,

Now come counsel for the plaintiffs in error and for defendants in error and move that a day be set for such argument that may be agreeable to the court.

Counsel for defendants in error resides in Florida, and has before this court Case No. 225, which he desires to argue, and it is suggested that it would be most convenient to said counsel if this case could be set as near to the time for the argument of Case No. 225 as possible, if that be agreeable to the court.

H. A. HERBERT,
BENJ. MICOU,
Counsel for Plaintiffs in Error.

W. A. BLOUNT,
A. C. BLOUNT,
W. A. BLOUNT, Jr.,
Counsel for Defendants in Error.

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JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

FLORIDA McGUIRE AND MATILDA CARO, PETITIONERS,

vs.

WM. FISHER, WM. A. BLOUNT, PENSACOLA CITY COMPANY, ET. AIS.

On petition for writ of Certiorari to the Circuit Court of Appeals for the Fifth Circuit.

Brief of WILLIAM A. BLOUNT, IN PRO. PER., and as Attorney for the other defendants.

H. S. WHITE, PRINTER, PENSACOLA, FLA.

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

FLORIDA McGUIRE AND MATILDA CARO, PETITIONERS,

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WM. FISHER, WM. A. BLOUNT, PENSACOLA CITY COMPANY, ET. ALS.

On petition for writ of Certiorari to the Circuit Court of Appeals for the Fifth Circuit.

Brief of WILLIAM A. BLOUNT, IN PRO. PER., and as Attorney for the other defendants.

We apprehend that it is not necessary for us to discuss the almost numberless questions raised by the petitioners in the petition and brief filed for them, upon this application. To do so, and to meet the various erroneous statements of facts which have no foundation in the record, and the statements of law which have no applicability to the questions involved, would be to consume the attention of the court by a brief more lengthy than that of the petitioners.

Upon this hearing, however, as we apprehend, there is nothing involved except whether the case—admitting for the sake of the argument that there were errors in the Circuit Court of Appeals—is a case which this Court, under the rules adopted by it in its previous decisions, will require to be certified from the lower court.

We assume that the petitioners have stated their case as strongly for themselves as possible in the summing contained in the twenty-second paragraph of the petition, on page twenty-one. The utmost that they can find to say as showing why this writ should be granted by this Court, is that the amount involved is about one hundred

and fifty thousand dollars: That numerous parties are interested in the decision: That the Court below has erred in admitting documentary evidence contrary to established rules of evidence, and that the Court below has erred in taking from the jury the consideration of questions within its province. These things, clearly, do not show a case which this Court,—if it adhere to its previous decisions,—will consider as justifying it in granting the writ, and there is nothing in the petition making a stronger case for the petitioners than they have thus made for themselves.

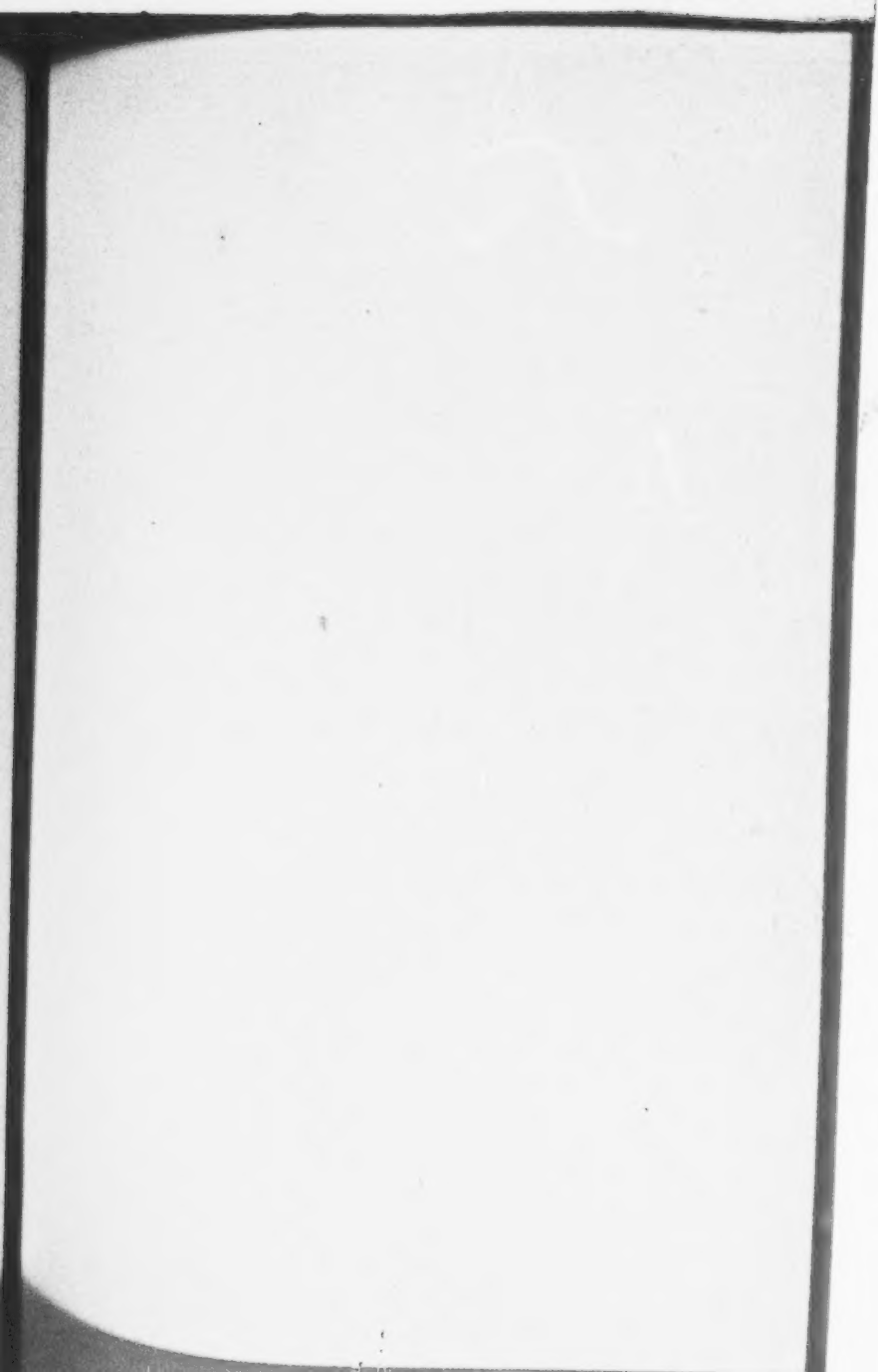
This Court has had this question under consideration frequently, and as a result thereof, has decided that it will sparingly exercise the power to grant this writ, and will exercise it only in cases where the questions are of gravity and importance, involving weighty and serious matters, or where there appears to be a necessity for avoiding conflict between two or more courts of appeal, or between courts of appeal and courts of a State, or in matters affecting the nation in its internal or external relations:

Lau Ow Bew, 141 U. S., 583, 587;
In Re Woods, 143 U. S. 202, 205;
Lau Ow Bew, 144, U. S. 47, 58;
American Construction Co. vs. Jacksonville R'y Co. 148 U. S. 372, 383;
Forsyth vs. Hammond, 166 U. S. 506.

These decisions so conclusively show that the case at bar does not fall within the class of cases in which the Court has felt that it ought to exercise the power requested, that it is unnecessary for us to add any further discussion.

Respectfully submitted,

WILLIAM A. BLOUNT,
In Pro. per. and as Attorney
for the other defendants.



IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1904.

No. 134.

FLORIDA McGUIRE AND MATILDA CARO,

vs.

WILLIAM A. BLOUNT, WILLIAM FISHER,)
MRS. WILLIAM FISHER, PENSACOLA)

N. B. The references in this brief are to the marginal and not to the top pages of the transcript before this Court, such marginal pages however, in most instances, coinciding very closely with the top pages.

The plaintiffs, on January 11, 1902, began a suit in ejectment against defendants, in the Circuit Court of the United States for the Northern District of Florida, at Pensacola, to recover three hundred superficial arpents of land now lying in the limits of the City of Pensacola.

The Pensacola City Company was not found, Julia A. Yonge and Mrs. William Fisher disclaimed, and the other defendants, confining their respective defenses to small portions of the tract, pleaded not guilty.

Before the trial, the plaintiffs filed a petition with the judge praying that he recuse himself. He denied the prayer of the petition, and plaintiffs excepted. The case was tried before a jury and the Judge directed the jury to find a verdict for the defendants, which was done, and a judgment rendered thereon. The plaintiffs took a writ of

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1904.

No. 134.

FLORIDA McGUIRE AND MATILDA CARO,

vs.

WILLIAM A. BLOUNT, WILLIAM FISHER, MRS. WILLIAM FISHER, PENSACOLA CITY COMPANY, THOMAS C. WATSON, JOHN WILLIAMS, JAMES M. BULLARD.

On CERTIORARI to the United States Circuit Court of Appeals, Fifth Judicial Circuit.

Brief of WILLIAM A. BLOUNT and A. C. BLOUNT, JR., attorneys for respondents herein, defendants in error below, and defendants in the Circuit Court *a quo*, and who are hereinafter called defendants, Florida McGuire and Matilda Caro being called plaintiffs.

Statement of the Case.

The plaintiffs, on January 11, 1902, began a suit in ejectment against defendants, in the Circuit Court of the United States for the Northern District of Florida, at Pensacola, to recover three hundred superficial arpents of land now lying in the limits of the City of Pensacola.

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Before the trial, the plaintiffs filed a petition with the judge praying that he recuse himself. He denied the prayer of the petition, and plaintiffs excepted. The case was tried before a jury and the Judge directed the jury to find a verdict for the defendants, which was done, and a judgment rendered thereon. The plaintiffs took a writ of

error to the Circuit Court of Appeals for the Fifth Judicial Circuit, which, upon a review of the record which has been presented to this Court, and of plats and maps which are not in such record, and of original documents which are not before this Court, affirmed the judgment (Tr. p. 488).

To review this judgment, the plaintiffs have procured from this Court this certiorari.

From the foregoing statement of facts it is obvious that there are but two general questions, i. e., whether the Judge erred in refusing to recuse himself, and whether he erred in directing the jury to find a verdict for the defendants.

There was no reversible error in the Judge's refusing to recuse himself.

This question is raised by the first assignment of error (page 385.) The petition and action of the Court and the exception of plaintiffs are on pages 24 and 26 of the transcript.

The error alleged is, "that the Court erred in refusing to recuse" himself.

There is however no particle of showing that there was error in the Court's so refusing. The petitioner relied upon an *unsworn petition* alleging certain facts; the Judge, from his personal knowledge of these facts, denied the allegations to be true; there is nothing to show that the Court was incorrect in its finding as to such facts, and, therefore, no showing of error.

It is true that the petitioners said in the petition that they desired to take testimony of witnesses, but the finding of the Court without taking such testimony cannot be urged as error, because:

A. The assignment of error does not embrace any such contention. It attacks only the result of the Judge's action, that is, his refusal to recuse himself, and does not attack his method in arriving at such result, that is, upon facts already known to him.

B. The petition itself did not pray that the petitioners might take testimony, but, only intimated a desire to do so; no request was made to the Court that testimony should be taken. (p. 25, record)

C. There was in the petition no statement that any such testimony existed, nor were any witnesses or other

evidence offered. It is too clear almost for citation of authority that the plaintiffs in error cannot allege error in the non-admission of testimony, in the Court below, upon a general offer to introduce testimony upon a given point, unaccompanied by the production of any witness or the propounding of any specific question to him. *Non constat* that any witness produced might not have been incompetent, or any evidence offered, hearsay or otherwise, inadmissible.

Ladd vs. Mo. Coal & Mining Co. (C. C. A.) 66 Fed. 882.

D. No exception on this ground was taken to the ruling of the Court. The exception was only that the plaintiffs, "did then and there except to the action and ruling of the Court." This exception is not good even as to the final ruling of the Court, because it does not state any ground of exception.

But if good as attacking the final decision of the Court it is not good as attacking the failure of the Court to call witnesses, because it does not specify such failure as a ground of objection. The Court may well have concluded that petitioners were satisfied with his statement of facts, and did not desire to introduce any witnesses, but relied upon the insufficiency of the facts stated by him to sustain his ruling.

E. The Court had a right to base its finding on its own knowledge of the facts and refuse to take testimony upon the subject. This is the rule in cases of contempt when the matter transpires in the presence of the Court, and, hence, is in his own knowledge.

Ex-parte Terry, 128 U. S. 290–306.

And there does not seem to be any reason why it does not apply in a case like this, where the facts were personal to the Court and known to him. It would have been useless to introduce witnesses to attempt to prove to the Judge that a state of facts concerning his own action was contrary to what he knew that action to be.

The only statement of fact upon which the plaintiffs planted themselves was that "*it did not appear* that Mrs. Lydia C. Swayne ever consented to the return of the said deed", etc., which, in reality, is not a statement of fact, but merely of a suspicion that Mrs. Swayne had not consented to a return by her husband when he discovered

that the deed was a quit claim deed, and comprised a portion of the Rivas tract.

In order that the petition could be a basis of action by the Court, it should have alleged a state of facts which showed the disqualification of the Judge, and thus have presented an assertion upon which he could take issue. The Judge could have contented himself with saying that the petition did not upon its face state any fact which should cause him to recuse himself.

The Court did not err in directing a verdict for the defendants.

The assignment of error which raises this question is the twenty-sixth (page 391). This question is determinable of course upon the bill of exceptions. The bill is wretchedly made, and still more wretchedly printed. It is thrown together without order or system. The Spanish documents are, in part, unintelligible, and the translations garbled and misrepresentations of the original. We will ask this Court to have caused to be brought before it the originals, in order that it may have the same records and papers before it as the Circuit Court of Appeals had, and while they are here, to have them copied, translated and printed. For the present, we take them as we find them, and merely call attention to the obvious errors when they become important.

In addition to the question of error *vel non* in the affirmative charge of the Court, the plaintiffs attempt to raise many questions as to the admissibility of evidence offered by defendants and admitted by the Court, but when an affirmative charge is given for the defendants, the material question is not whether there may or may not have been error in the admission or rejection of particular pieces of evidence, but whether there was sufficient admissible testimony to require a finding that the plaintiffs were not entitled to a verdict. In other words, when there has been such affirmative charge, the appellate court will not reverse for any error in admitting testimony unless the testimony so admitted is necessary to sustain the verdict directed:

Chapman vs. Yellow Poplar, &c. Co. (C. C. A.) 89 Fed. Rep. 903, 904;

Holmes vs. Goldsmith, 147 U S., 162.

Statement of the Evidence.

As we read the record, and assuming that all the evidence on both sides was admissible, there are no contradictions except as to one item sworn to by A. V. Caro, a witness for the plaintiff, upon which we will comment hereafter. The facts uncontradicted and established are as follows:

Evidence of date anterior to the judicial proceedings to sell the three hundred arpents of land in controversy.

On the 10th of November, 1806, John Ventura Morales, Intendant, etc., made a grant of three hundred arpents of land on the outskirts of the City of Pensacola, to Gabriel Rivas (pages 27 to 33). On February 27, 1807, Gabriel Rivas made a will (pages 111–113, 121–123) wherein, after providing for the dowry of his wife and the payment of his debts, he mentioned all his property, consisting of two houses in Pensacola, "300 arpents of land outside the city limits", and certain sums of money due him. He stated his children to be seven, including Gabriel Rivas and Paula, who afterwards married Joseph E. Caro. The plaintiffs are the direct descendants of Paula Caro (born Rivas) and based their claim to the property in controversy on the Spanish grant to Gabriel Rivas and their descent from him through Paula Rivas.

In his will he appointed his wife, Maria Moreno, his Administratrix, and Eugenio Sierra the Guardian of his minor children.

He died on the 23th of April, 1808, and was buried on the succeeding day (pages 194–195, 204–205). His will was probated by proceedings beginning April 30, 1808 (the translation, page 124, has it, "in the month of April", but the original, page 114, has it, "a trienta", the 30th "de Abril"), and ending by the approval of Folch, Governor, on May 2, 1808. In these proceedings, the will is declared to be "legal, and according to decree and judicial proceedure", and the appointment of Maria Moreno and Eugenio Sierra (page 130) is confirmed.

On May 28, 1809, Folch, Governor, orders that the Administratrix and Guardian present inventories of the

estate and sworn accounts of the debts and expenses (page 139).

Documentary evidence of the judicial proceedings to sell the 300 arpents of land in controversy.

There appears no evidence that this was done at once, but on August 16, 1817, Maria Moreno, Administratrix, presents a statement showing that she had sold two houses for sums named, and "there remains belonging to the estate at the place called Bayou Texar 300 arpents of land that were granted to me by this government" (pages 157, 189, 190), and on the same day submitted a statement of her accounts with the estate (pages 162–164, 195–197) and the vouchers for them, and her marriage articles (pages 155–156, 187 to 189), and on August 18th submitted herself to the orders of the Governor (pages 164 and 179). These accounts were shown to the heirs and their husbands and the curators of the minors (pages 197 to 202) including Eugenio Sierra, the curator, who, on September 13, 1817, presented a statement showing that he had seen the accounts and thought them correct; that it had been necessary to repair the houses which were left; that Gabriel Rivas left them without means, and "that the 300 arpents of land should be valued and sold" (pages 167, 168 and 199.)

On September 15th, Joseph E. Caro, "representing his wife, Paula Rivas", concurs in the approval of Maria Moreno's accounts and in the proposed valuation and sale of the 300 arpents (pages 180 and 181, 215 and 216).

On September 17th, 1817, Masot, Governor, orders that the land be valued and sold at public outcry (page 216).

Upon suggestion of Eugenio Sierra, appraisers were ordered to be appointed (pages 167 and 200), and were appointed by the heirs and parties in interest, including Joseph E. Caro (*ib.*), and the appraisers appraised the land (pages 168 and 201) and the Governor, on October 17, 1817, ordered it sold (pages 168, 201).

Thereupon, an order was made on the same day, fixing the date of the sale as the 20th instant, and ordering the posting of notices (pages 170, 171, 204)

Accordingly, the sale at public auction was made on October 20th, 1817, and the property bought by Gregorio

Caro for $572.00, and certificates of sale given signed by the Curator, Sierra, and by the heirs and their representatives, Joseph E. Caro signing for his wife (pages 173, 207), the money paid and the sale approved by the Governor (pages 173, 174, 207, 209) on October 27, 1817, and Sierra reciting that the only land remaining for sale had been sold, asked that there be a division and partition (pages 174, 175, 208), and the order was made (ib).

The accountant made a statement supplementary to the account rendered by Maria Moreno, but including it, and including the $572.00 realized from the sale of the three hundred arpents of land, and dividing the balance among the widow and heirs (175, 176, 209, 210). The heirs, including Paula Rivas, by her husband, Jos. E. Caro, were notified, and acquiesced in the division of the property (pages 177, 210, 212). The Governor then confirmed the division and directed payment of the money in accordance therewith, instructing that "in as much as Donna Paula is of lawful age, let her share be delivered to her husband, who in the same manner will execute a corresponding receipt offered to answer for the same with his person and property" (pages 177, 178, 212), and in accordance with said order, each of the persons interested signed receipts for their distributive shares, the receipt of Caro for his wife, Paula Rivas, being found on pages 179, 180, 214.

Documentary evidence subsequent to the judicial proceedings to sell the three hundred arpents of land in controversy.

1. Upon the day after the purchase at the judicial sale mentioned, Gregorio Caro, the purchaser, sold the 300 arpents to James Fitzsimmons, Samuel M. Smythe and John Chabeaux, describing the property conveyed as, "the lot of land I purchased at a public sale made of the estate of the late Gabriel Rivas on the 21st instant." (page 234.)

2. A year afterwards (October 1, 1818), John Chabeaux declared by a deed of partition "that the purchase made by John Chabeaux of the third part of the land of Widow Rivas, situated on the East side of the Town of Pensacola" equally belonged to him, Louis Docquemil Demorant and Laurent Millaudon (page 312, 314).

3. A year later (Nov. 22, 1819), Fitzsimmons sells to John Chabeaux "the undivided third part of a tract of land

of three hundred arpents which I purchased in co-partnership with Samuel M. Smythe and the said Chabeaux, as appears by a deed of sale passed in this office [the Governor's office] bearing date the 21st of October, 1817" (page 237).

4. After the appointment of the Commissioners for the settlement of land claims in West Florida under the act of May 8, 1822, (3 Statutes at Large, page 709), John Chabeaux presented his claim to the land in controversy, producing the "original act of sale duly authenticated from Gregorio Caro to the claimant, dated 22d October, 1817," and also producing "original grant of the said tract of lands to Gabriel Rivas dated 10th of November, in the year 1806" (pages 226, 229 and 233.)

5. In proof of his claim before the Commissioners, Chabeaux exhibited a copy of a plat and certificate of survey executed by V. S. Pintado, surveyor general, on the 2d and 3d, and returned on the 6th of October, 1806; certified by the same on the 27th October, 1806; survey ordered by the Intendant Morales on the 31st July, 1806, in favor of Gabriel Rivas. Also an original grant or title in form made to Gabriel Rivas by the Intendant Morales countersigned by F. G. Arroza, Secretary, and dated the 10th November, 1806. Also a copy of a mesne conveyance from Gregorio Caro to John Chabeaux, James Fitzsimmons and Samuel M. Smythe, passed before Governor Masot and the assistant witnesses, Sousa and Cevallos, on the 22d of October, 1817, certified to be a true copy by the same persons on the same day. This deed recited that Caro purchased at a public sale of the estate of Gabriel Rivas, dec'd, on the 21st October, 1817. Also a copy of a mesne conveyance from James Fitzsimmons to John Chabeaux of his undivided third part of said land, passed before Governor Callava and the assistant witnesses, Sousa and Caro, on the 22d November, 1819; certified by the same persons on the 11th December, 1819. Joseph E. Caro proved the signatures to the foregoing title papers. (Pages 229 and 230, record.)

6. The Commissioners confirmed the title of John Chabeaux to this land:

"An abstract of claims to land in West Florida founded on original grants, concessions and orders of survey, made gratuitously by the Spanish Government, upon the condi-

tion of clearing and cultivation, and which have been confirmed by the undersigned Commissioners:

No.	By Whom Claimed	Original Grantee.	Nature of Claim.	Date of Claim.	Number arpents.
46	John Chabeaux	Gabriel Rivas	Grant	Nov. 1806	300

(The bill of exceptions, page 288, does not show the confirmation, but fortunately the American State Papers, which is referred to and to which this Court will refer, shows confirmation as above.)

Vol. IV Am. St. Papers, p. 103.

7. Congress, on April 22, 1826, (4 U. S. Stat. at Large, page 156) confirmed the claim under the first section thereof, which is as follows:

"(a) Be it enacted by the senate and house of representatives of the United States of America in Congress assembled, that all the decisions made by the Commissioners appointed to ascertain claims and titles to lands in the District of West Florida, made in favor of claimants to lands and lots in said district, contained in the reports, opinions and abstracts of the Commissioners, which have been transmitted to the Secretary of the Treasury, according to law, be and the same are hereby confirmed." (Page 232, record.)

8. The interest of Chabeaux was sold under execution against him to John Brosnaham and Henry Michelet, on January 6, 1834, and the deed duly recorded (pages 319, 321.) The deed purports to convey as levied upon, "amongst other property of the said John Chabeaux five undivided eighteenth parts of a tract of land of three hundred arpents fronting the Bay of Pensacola and Bayou Texar about one mile from the City of Pensacola."

9. The said John Brosnaham and Henry Michelet, by deed made November 6, 1834, duly recorded October 25, 1835, conveyed to Walter Gregory "the five undivided eighteenth parts of the three hundred arpents lying on the Bay of Pensacola, being the land formerly owned by John Chabeaux" (pages 314, 316.)

10. On February 9, 1835, the Marshal of the United States Superior Court conveyed, for the consideration of a credit of $3,376.00, to Walter Gregory, purchaser at execution sale against the heirs of Louis Docquemil Demorant

his "three undivided eighteenth parts (see Chabeaux's declaration No. 2) of a tract of land of 300 arpents called the Rivas land, lying and being in Escambia County near Bayou Texar" (page 318).

11. Millaudon conveyed to W. H. Chase on November 23, 1837, his interest in the land "situated, lying and being on the Bay of Pensacola, and within the corporate limits of the City of Pensacola known as the Rivas Tract" (consideration, $31,800, deed recorded Feb. 14, 1837). (Pages 316, 317.) Between the sale to Gregorio Caro and the making of this deed, the limits of the City of Pensacola had been extended. See Section one, Act of February 16, 1833, (Session Acts, p. 110) Legislature of Florida, a copy of which section is attached to this brief as appendix A.

12. Chase and Gregory having as they thought acquired the Chabeaux and Fitzsimmons interests, bought the interest of Smythe in the land, (page 323) and executed, with certain other persons interested with them, the quadrapartite deed (page 321), vesting the title in trustees of a joint stock association called the Pensacola City Company. This deed was made January 13, 1837, and recorded on June 28, 1837, (page 336). It recited that the Association had been known as the Pensacola Land Company, and had attached to it a map showing "the several parcels of land comprised within yellow lines, on each of which parcel is written, Pensacola Land Company" (page 325.) This map is not in the printed record, but was before the Circuit Court and the Circuit Court of Appeals, but was omitted by order of the latter Court. (Page 1 of record). But we are asking this Court to have it and the other maps and plans certified to this Court.

This deed also shows that large sales of lots—eleven hundred and forty-nine in number, according to the plan of the Pensacola City Company—had been sold on January 3d, 4th and 5th, 1837, by Chase as Trustee of the Pensacola Land Association (pages 325 and 331).

13. In 1835–1837 Chase and his associates caused to be prepared by George E. Chase, and lithographed, a map of their holdings in Pensacola, including the land in controversy, and by this map the foregoing sales were made. This map was in evidence (page 308.) By it a sale from the Trustees of the Pensacola City Company to Henry Ahrens was made April 3, 1842 (page 51), and it was the

recognized plan from 1857, to the outbreak of the civil war between the States (testimony of A. C. Blount, page 204) and up to 1872 (testimony of W. F. Lee, pages 307, 308, and testimony of Chas. Ahrens, page 73), when the Pensacola City Company, the corporation which succeeded the stock company by the same name, had a new map prepared by Harding & Lee. and lithographed, and this map then became the accepted plan of that portion of the City of Pensacola (testimony of Wm. F. Lee, pages 308, 309).

14. On December 23, 1835, Joseph E. Caro, "the keeper of the public archives of West Florida, duly qualified and commissioned by the President of the United States," and Secretary of the Board of Commissioners for the ascertainment and settlement of land claims in West Florida, made and filed in his office, "an abstract of claims to lands in West Florida which have been confirmed as appears on file in the office of the public archives" (page 56.) This abstract declares as follows :

"Plat 'A'. This is a grant for 300 arpens of land made to Gabriel Rivas by the Intendant General of the province of West Florida, John Ventura Morales, bearing date 10th day of November in the year 1806. The said tract was sold at public auction by order of the Spanish tribunal in order to settle the estate of the said Gabriel Rivas, by a judicial act of sale bearing date 20th of October, in the year 1817, and purchased by Gregorio Caro for the sum of $572.00. The said Gregorio Caro conveyed the above tract of land to James Fitzsimmons, Samuel M. Smythe and John Chabeaux, by an act of sale duly authenticated, bearing date 22nd day of October, in the year 1817. James Fitzsimmons conveyed to Cirilo DeMorant as the attorney in fact of John Chabeaux, the undivided third part of the tract of land above mentioned by an act of sale duly authenticated, bearing date 22nd day of November, in the year 1819."

On the same day the same keeper of the public archives made and filed in his office a description of the lands confirmed by the Commissioners (page 231). The description is as follows:

"Plat 'A', description of the courses and distances contained in said plat, to-wit: 300 arpens situated about a quarter of a mile from the mouth of the creek of marshy ground between N. N. E. and N E. ¼ N. which is the ex-

tremely east of the Town of Pensacola, bounded on the North and West by vacant lands, on the South bordering by the Bay of Pensacola, and on the East by Bayou Texar, directing the western limit on the North and the limit which terminates the depth on the East all by the compas (compass) declining 7 degrees and 50 minutes to the N. E."

This description is substantially the same as that in the grant to Gabriel Rivas, which latter description is as follows:

"A lot of 300 superficial arpents at a half league more or less of this place at the mouth of Bayou Texar." "Of the survey of more than a quarter of a mile of English Terrestial measurment from the mouth of the rivulet of the marsh between the North, Northeast and Northeast by North, which rivulet is the extreme east of this population according to the plan thereof, and is bounded northerly and westerly by vacant lands, southerly it confines with the Bay of Pensacola and easterly with the rivulet of the Texar, its most western limit being north of the compass. with a declination of seven degrees and fifty minutes to the Northeast as is shown by said plan in which is figured the lots noted the dimensions of its sides in by Gabriel de Rivas." (P 31).

The plat (page 232) attached to the abstract is identical with the plat attached to the grant (page 29).

16. In 1870, the Pensacola City Co., a stock company, became incorporated, and the stock company conveyed to the corporation the property in controversy by deed dated May 13, 1870 (pages 336 and 339)

17. And thereafter, in 1872, the corporation caused Lee & Harding to make a new map embracing this property (page 309) for the purpose of making the plan correspond "with the balance of the City" and it has been the accepted plan of that portion of the City since that time (Lee's testimony, page 308.)

Evidence as to possession and assertion of title prior to 1867.

There is no testimony by any witness of any *possessio pedis* by any person claiming under Gabriel de Rivas or under the judicial sale of Gregorio Caro of any portion of this property from the time of the death of Gabriel Rivas

to the year 1869. There were persons who had built and occupied houses on it prior to this time, but the testimony does not connect them with either claimant to the property. Thus, Manuel Gonzalez testified (page 68) that there were a good many persons on the land prior to the civil war, but he does not know under what title, or by whose permission. Walter J. Bicker testified that there were three houses on it before the war, Shemo, Avery and McCaskill (page 74). W. E. Anderson testified that he had lived with his father on this tract more than 60 years ago, and there were several houses built on the point near the house in which he lived (page 306). W. F. Lee testified to the existence of some houses on the tract prior to the civil war (page 307).

It appears that the Rivas heirs did not have possession of the property. A. V. Caro testified "All I know is that my father claimed it; said it belonged to his wife. He never went into possession of it that I know of" (page 37).

There were, however, acts of dominion over it, for George Brainard was before 1860 the agent for the Pensacola City Company (A. V. Caro's testimony, page 40; A. C. Blount's testimony, page 303), and he employed A. V. Caro to look after the lands (ib.). A. V. Caro afterwards sued the Pensacola City Co. for watching, taking care of and attending to the landed interests in the City of Pensacola, consisting of "lots of lands" of the Pensacola City Co., (pages 44 and 45) the said lands including the Chabeaux or Rivas Tract (A. C. Blount's testimony, 303). He recovered a verdict April 6, 1869 for $600 00 (page 45). The Pensacola City Co. paid the taxes regularly through Brainard and A. C. Blount (A C. Blount's testimony, page 303.) The Rivas heirs never paid any taxes (A V. Caro's testimony, pages 52 and 53).

There is no contradiction in the testimony or the documentary evidence as to the foregoing facts.

The disputed fact to which we have heretofore adverted as raised by A. V Caro's testimony, is whether Joseph E. Caro ever claimed the land for his wife, or exercised any acts of dominion over it. As to this, A. V. Caro swears that his father always claimed it as the property of his wife (pages 34, 37, 39), and that his father used to send a

drayman on "the land when he wanted wood" (page 34). Any belief in this testimony is absolutely destroyed, however, by A. V. Caro's own testimony and the documentary evidence. He further swears, however, "all I know is that my father claimed it for his wife; "I was quite a boy then" (page 34); "I was born in 1837" (page 34); "I know that he claimed it in 1848 or somewhere about that time "(page 52); "I understood my father claimed this tract of land for my mother as an heir of Gabriel Rivas" (page 54).

The understanding, then, of a boy of 13, confined so far as the most positive testimony goes, to one year, is the sum total of his testimony on the point of assertion of title.

The record evidence, however, is conclusive against him, for the Protocol A is conclusive of Joseph E. Caro's participation in and receipt of the benefits of the sale by which his wife's title was divested. Not only this, but Joseph E. Caro was a witness to the deed subsequently conveying the property (page 238); affirmatively assisted before the Land Commissioners in having the title confirmed to Chabeaux, who claimed adversely to any title by his wife (page 228); approved as Secretary of the Commission, all the deraignment of title under this sale to Chabeaux (page 229); certified solemnly in 1835 that the title had passed out of his wife and into Chabeaux (page 56); and yet, placed on record no intimation of a claim, and asserted no claim to any witness except to this boy of 13 years. This same boy, with a knowledge of the claim of his mother, ignores it; accepts employment from the adverse claimant to look out for the lands; when this employment ceases, begins to give leases as the agent of one John Brosnaham (page 38), and buys for $50.00 a quit claim deed from a man named Chabeaux (page 58), evidently because he knew that the title to the land had been confirmed to one John Chabeaux, and he was even willing to buy it for Brainard as the agent of the Pensacola City Co. (page 38).

No Court would ever permit a jury upon this testimony to find that there had been an assertion of title by Joseph E. Caro. A. V. Caro's testimony that his father used to send a drayman to the land when he wanted wood is, if considered as an incident to a claim of title, as worthless as the testimony of the assertion to title.

Evidence of Possession Since 1867.

The first possession of this tract was in 1867 by Ephriam Pleasure as a tenant of the Pensacola City Co., put there by Blount and his possession confirmed by Brainard (pages 69 and 70), they being attorney and agent for the Pensacola City Co. (Caro's testimony page 40 and Blount's testimony, pages 303 and 304). When A. V. Caro in 1870 or 1871 (page 38) conceived the idea of claiming the property he prevailed upon Pleasure to take a lease from him, representing the Rivas heirs (Pleasure's testimony, page 69). Caro knew that he was tenant of the Pensacola City Co. (Caro's testimony, page 39). He continued the same course with other tenants of the Pensacola City Co., procuring them to take leases from him, he, himself, testifying, "I made a practice whenever I found anybody on it holding under the Pensacola City Co., to go to the tenants and get them to acknowledge me as a Rivas heir, and their land holder" (page 54). He placed as tenants, Villeneuve (page 71), Leggett, (page 71), Robinson (page 72), Ingraham (page 75), Beck (page 76). Of these only Ingraham paid rent They remained until 1887, when William Fisher was appointed Receiver. This was all the possession of the Rivas heirs.

In the meantime, however, the Pensacola City Co. and its assigns had possession, also. Ephraim Pleasure was its tenant, and no notice of his disavowal of the tenancy being shown, he remained such tenant. (See as to this same tenancy of this same man and his failure to disavow, to the Pensacola City Co., his tenancy, Wilkins vs. Pensacola City Co., 36 Fla., 36 and 60).

William Lennox went on the land by permission of Blount and Yonge, 30 years before the trial and remained there paying rent to William Fisher after he became Receiver (pages 70 and 71).

The stockholders of the Pensacola City Co. took their stock out in lots (Wm. E. Anderson, page 307). More than 300 lots were sold by it by the plan of Harding & Lee which had been caused to be made by the Pensacola City Co. (page 311).

Walter Tate claimed certain lots in the Chabeaux Tract under title from the Pensacola City Co. (Tate's testimony, page 305). He went into possession of some portion of

the tract in 1874. Adam Lenox was his tenant until Fisher's Receivership began. He put out of possession Andrew Lenox, Nathaniel B.——— and Dr. Clark: "I put them out, and put others in" (page 305). Tate put out Alfred Daniels, a tenant of Caro, and put in Richard Watkins, who remainded on the tract for 17 or 18 years (Caro's testimony, page 53).

Various suits in ejectment and chancery were brought by the Rivas heirs against the Pensacola City Co., and vice versa, all of which resulted in favor of the Pensacola City Co. See bills and answers in chancery (pages 94 and 103.)

The majority of the tenants on the land before the Receivership, were tenants of the Pensacola City Co. and Yonge and Tate holding under that Company. There were one or two tenants claiming under Caro (Fisher's testimony, page 89). Then, between the time when Caro began to lease and the appointment of the Receiver, both claimants had possession of different portions of the Tract and constant litigation between them occurred, constituting what the courts know as a mixed possession.

In April, 1889, all possession on either side ceased, for upon the bill just above mentioned, the Court appointed William Fisher Receiver to take charge of all the lands, and to collect the rents therefrom (Fisher's testimony, pages 89, 309). He has "been in possession ever since, collecting rents, and the exclusive possession of all the property "except two or three lots which he gave to A. V. Caro" (ib).

A final decree was rendered in said cause on June 17, 1889, (pages 90 to 93) whereby the title to the Rivas or Chabeaux Tract was finally adjudged to be in the Pensacola City Co. and its assigns.

This decree was affirmed by the Supreme Court of Florida in the case of Wilkins vs. Davidson, 36 Fla., 36.

The Receiver was not discharged, but has been in possession ever since, and has at all times recognized the complainant's title (Fisher's testimony, page 311), and while before the final decree he accounted to the Court, after the final decree he "attorned to the Pensacola City Co. and settled with the persons holding under it" (page 312).

During the time between 1887, when Fisher became Receiver, and the trial of this cause the taxes amounted to

more than $15,000, and were paid by the owners claiming through the Pensacola City Co. (Fisher's testimony, page 310). No Rivas heirs except A. V. Caro has ever been on the land since Fisher's appointment (A. V. Caro's testimony, page 57), the portions occupied by A. V. Caro having been given him by Fisher (pages 309, 310).

Contentions of the parties:

Upon these facts, the plaintiffs contend:

1. That the title to the land in controversy was vested in Gabriel Rivas by grant from the Spanish Government, and that the title is still in his heirs, of whom the plaintiffs are two.

To which the defendants answer:

2. That the title of Gabriel Rivas was divested out of him by a judicial sale made by the Spanish authorities on October 20, 1817; and

3. That if the title was not so divested, the Rivas heirs are barred by adverse possession for the period of the Statute of Limitation.

The plaintiffs reply to these:

4. That both of the propositions, two and three, are unsustained by the evidence;

5. That the defendants, being trespassers without title in themselves and entering upon the possession of the plaintiffs, cannot set up an outstanding title in a third person as a defense to the plaintiffs' suit.

There are many minor contentions of the plaintiffs which fall within these general heads, or falling without them, will be best discussed by themselves.

The seventeen years of litigation in which we have been engaged in this controversy in which the Pensacola City Co. and its assigns have been uniformly successful, have taught us the fertility, if not the soundness, of the various counsel for the Rivas heirs, and we cannot hope to anticipate all the arguments which may be made in this Court, but we must necessarily content ourselves in answering those found in their briefs before the Circuit Court of Appeals and in the petition for certiorari and the brief filed therewith in this Court.

ARGUMENT.

26th Assignment of Error, Page 391.

This assignment was as follows:

Twenty-sixth.

"The Court erred in granting the motion of counsel for defendants that the Court should instruct the jury to render a verdict for the defendants in the cause and overruling plaintiffs' objections to said motion".

1.

Assuming, as we do at present, that the evidence offered by the plaintiffs of the grant to Gabriel Rivas was admissible, then defendants admit that the title of the *locus in quo* vested in him by the grant mentioned.

But the defendants say, that,

2.

The title was divested out of the heirs of Gabriel Rivas by a judicial act of sale consummated October 21, 1817, conducted by and under authority of Jose Masot, Spanish Governor and sub-delegate of the Royal Excheques of West Florida, such act of sale being evidenced by the papers called Protocol A.

The plaintiffs reply that:

The papers offered constituting Protocol A were not admissible in evidence because:

A. There was no proof of their authenticity, by which we assume that they mean, proof of execution, and of the official character of the persons executing them.

B. There was no proof that the land embraced in the act of sale was the land granted to Gabriel Rivas, and therefore the land in controversy.

And that if the Protocol was admissible in evidence, it was not and is not effective to bar the plaintiffs, because,

C. The sale evidenced thereby was not valid under the Spanish law.

That this proceeding divested the title out of the heirs of Gabriel Rivas (including Paula Rivas, the grandmother of plaintiffs,) and vested it in grantors of the Pensacola City Company (under whom defendants claim) has been so often decided that the discussion of it becomes wearisome.

It was so decided,

In the United States Circuit Court for the Northern District of Florida:

1. In the case in ejectment of E. J. Caro, et. al., heirs of Paula Rivas vs. C. M. Hooper, a tenant of the Pensacola City Company, (pages 60, 105, 106, record.)

2. In the case in chancery of Matilda C. Duval, et. al., (heirs of Paula Rivas) against the Pensacola City Company, (pages 62 and 108, record.)

In the State Circuit Court of Escambia County, Florida:

1. In the case in ejectment of Pensacola City Company vs. A. V. Caro, et. al., (heirs of Paula Rivas,) (pages 61 and 107, record.)

2. In the case in chancery of the Pensacola City Company vs. A. V. Caro, et. al., (heirs of Paula Rivas,) (pages 61 and 108, record.)

3. In the case in chancery of Pensacola City Company, W. H. Davison, et. al., vs. John C. Lavalette, Joseph Wilkins, et. al., (heirs and grantees of heirs of Paula Rivas,) (pages 58, 90 and 102, record.)

In the Supreme Court of Florida:

1. In the chancery case of Pensacola City Company vs. A. V. Caro, et. al., (heirs of Paula Rivas,) (pages 60, 61 and 108, record;) 19 Fla. Reports, page 766.

2. In the case in chancery of the Pensacola City Company, W. H. Davison, et. al., vs. John C. Lavalette, Joseph Wilkins, et. al., (heirs and grantees of heirs of Paula Rivas;) 36 Florida Reports, page 36.

In the U. S. Circuit Court of Appeals.

In the instant case.

It seems, however, that the heirs of Paula Rivas are so numerous that we must argue the question at least once again.

We answer primarily to all the objections:

None of the plaintiffs' objections to the protocol A and the proceedings evidenced thereby

can be considered, for they have been adjudicated by the Spanish tribunal.

Its effectiveness was passed upon after it was made by the Spanish tribunal and it was pronounced effective.

The deed from Gregorio Caro to Fitzsimmons, Smyth and Chabeau made October 22, 1817, (page 334, record,) reciting this sale was passed before Jose Masot, Civil and Military Governor of West Florida. The fact that it was so passed was a conclusive declaration that the recitals therein were true, and that the title was in the grantor.

"By the regulations of Morales, mesne conveyances were made before the Commandants of Posts who were directed to see that the seller presented to the buyer the title which he had obtained' * * * * * In West Florida this duty was not only executed by the governor but by the escribanos or notaries of government and under the constitution by Alcaldes. On such occasions these officers were vested with *judicial* powers and instructed to see that the claim as to its derivation was regular and complete. These mesne conveyances sometimes recite the dates, etc., of several of the preceding deeds, and thus set forth the chain of title to the present claimant. The circumstance of the transfer having been made before these officers is making out a title the validity of which has been thus virtually recognized by the Spanish authorities. It is understood to have been both the law and the practice in West Florida to consider these recitations of prior conveyances as conclusive evidence of title. Whenever it was made out in this shape, no further testimony was required to establish it in any of the Spanish tribunals."

4 Am. State Papers, p. 104.

"Every sale before a Governor or Commandant under the Spanish government is equivalent to a judicial sentence and is in fact in all respects the approval of the title of the grantor. The officers before whom a Spanish bill of sale is passed are bound to see that a person making it exhibits his title, and that title in the first sale is the grant from the proper officers of the crown."

"In all the tribunals of France and Spain, upon a suit to recover possession of lands, what we would call the plaintiff in ejectment is only bound to exhibit his notarial bill of

sale, which is conclusive without deraignment of his title under that peculiar system."

1 Cal. Land Laws, pages 719, 720.

But, if the questions raised by plaintiffs are still open, we answer that the Protocol was shown to be authentic and thus admissible in evidence:

Because it came from the custody of a public official whose duty it was to keep it;

Because it was pronounced valid by the Commissioners (appointed under the act of Congress of May 8, 1822, entitled, "An act for ascertaining claims and titles to lands within the territory of Florida" (3d Statutes at Large, page 709), confirming the title to this property in John Chabeaux; and,

Because it was admissible under the evidence as an ancient document.

Protocol A was admissible in evidence because it came from the custody of a public officer whose duty it was to keep it.

It was a public file produced by a public officer from the public records. In such case no proof of the signatures of the persons executing it or of their official character will be required.

This was the *record of a court*. It is so spoken of by Jos. E. Caro, a Spanish scholar (testimony of A. V. Caro, page 40, record,) and keeper of the Spanish archives, (page 57, record,) and grandfather of the plaintiffs, (page 33, record,) who calls it "a judicial act of sale" (page 56, record.) He was not only a party to this particular proceeding (pages 202, 207, 212, 214, 216, 217, record,) but also to an analagous proceeding for the sale of another piece of property in Pensacola (pages 131–146, record,) in which he figured as in this, (pages 144, 145 and 146, record) and thus was thoroughly familiar with the character of such proceedings.

In a like proceeding we find Vicente Folch, a Governor, (2 Cal. Land Laws. 255,) with like powers, requiring the probate of a will, (page 139, record,) issuing letters testamentary, (page 142, record,) requiring an executor to account, (page 139, record,) calling himself "Judge Sub-Delegate of the Supreme Audience," (page 138, record,) speaking of himself and assistants as a "court," (page 139, record,) and of the proceedings as "judicial procedure," and the result as a "decree," (page 142, record.)

The proceedings, themselves, moreover, show conclusively their judicial character as the transactions of a Spanish court. This being so, proof of the signature of the persons executing them or of their official character was not necessary.

Williams vs. Conger 125 U. S. 397–409.

The original came from R. L. Scarlett, Surveyor-General of the United States, who, by admission of the plaintiffs, was at that time the keeper of the Spanish Archives of West Florida, (page 111, record.)

The translation is certified to by F. E. de LaRua, (page 222, record,) who was, himself, keeper of the Spanish Archives as shown by his various certificates. (For example, pages 32, 222, 226, 236, 238, record, covering the years 1873, 1879, 1885, 1887.)

The right of the several custodians of these archives and the devolution of their possession is as follows:

By section 9 of the Act of March 3, 1825 (4th Statutes at Large, page 126) the President of the United States was authorized to appoint a keeper of the public archives for West Florida.

On March 7th, 1825, the President appointed Joseph E. Caro, as such keeper. (See certified copy of such appointment hereto attached as appendix "C," and see Caro's certificate, page 64). Caro took possession of these archives and retained possession of them (See A. V. Caro's and A. C. Blount's testimony [and certificates of Joseph E. Caro,] pages 57 and 301) until his death, which occurred in 1860 (A. V. Caro's testimony, page 39).

His death occurred about the outbreak of the Civil War between the States, and Florida seceding, the Federal Government had no custodian, and the State of Florida by Act of the Legislature of December 5, 1861 (Session Acts page 10) appointed Filo de la Rua Clerk of the Circuit Court of Escambia County, Florida, as keeper of the archives (See copy of the Act hereto appended as appendix "C")

De la Rua continued in possession of such archives until his death, when they passed to his son, John, Clerk of the said Circuit Court.

Thereafter the acting Secretary of the Interior of the United States directed the Commissioner of the General Land Office to obtain possession of such archives and to place them in charge of the Surveyor General of the United

States at Tallahassee. Under such order the Surveyor General received them and receipted for them (See the direction of the acting Secretary and the receipt of the Surveyor General duly certified hereto appended as Appendix "D")

We have thus an unbroken line of custodians from the Land Commissioners through Caro and La Rua to Scarlett, from whose custody these papers came. Beyond this, they each acted as keeper of the Spanish archives. (See as to Caro, pages 57, 301, and his certificates as such in the record; as to La Rua, page 303 and his various certificates as such; for example, pages 32, 222, 226, 228; and as to Scarlett, the admission of defendants as to his official capacity, page 111, and his various certificates as such custodian.)

They, exercising the powers of the office, will be presumed to have done so legally, and to have been duly appointed and acting:

McMahan vs. Lord, 6 H. L., 970, 984;
19 A. & E. Ency. (1 Ed.) 436, 437.

In fact, the only evidence of title upon which the plaintiffs themselves rely, the grant to Gabriel Rivas, is proven only by a copy certified by the same R. L. Scarlett as keeper of the public archives, (pages 29 and 30, record,) and the only translation thereof is by the same F. E. de LaRua, keeper of such archives, (pages 32 and 33, record.)

If this protocol A is not evidence, then the plaintiffs showed no title in Gabriel de Rivas under whom they claim.

Even a copy of a paper certified by a public officer who is the custodian of it, is evidence without proof of signatures to the original, upon general principles of law.

U. S. vs. Percheman, 7 Pet. 51;
MaGruder vs. Roe, 13 Fla., 602;
Bell vs. Kendrick, 25 Fla., 778.

The plaintiffs say, however, that there should have been proof that this particular paper came properly into the archives and that it has been in such archives more than thirty years. Such a requirement would annihilate the rule just stated, and require in all cases an impossible quantum of evidence in order to introduce a paper as an official document. Under such a rule, it would be impossible to prove any paper in the custody of the Clerk of any

court except those placed there by himself, and which he happened to recollect.

Protocol A was admissible in evidence because the title evidenced by it had been pronounced valid by the confirmation of the Land Commissioners for West Florida.

The claim was presented to the Commissioners (pages 223, 229 and 230, record,) and passed upon by them and confirmed, (page 232, record, and 4th American State Papers, claim 46, p. 103.) This confirmation was, itself, confirmed by the Congress of the United States by act of April 22, 1826, Section 1, 4th U. S Stat. at Large, page 156, set forth in the transcript at page 232.

This act of the Commissioners was evidence of title in Chabeaux and hence of the authenticity of the protocol, and of the validity of the sale under which he claimed.

Hallett vs. Doe, 7 Ala., 900;
Cousin vs. Labatut, 19 How. 202–211;
U. S. Arredondo, 6 Pet. 723–724

Protocol A was shown to be an ancient document admissible without proof of execution.

To make a document admissible as an ancient document, it is only necessary:

1. That it should not raise on its face any suspicion of its genuineness.

2. That it should appear upon its face to be more than thirty years old.

3. That it should have come from the proper, that is, the natural custody; and

4. That possession of the land,—if it be a deed to land, embraced in it, should have accompanied it or followed it; or

That other facts and circumstances should accompany or follow its execution, showing a state of facts naturally resulting only from its existence.

Applegate vs. Lexington, &c., Mining Co., 117 U. S. 255–263.

This instrument successfully meets each of these tests.

Protocol A was regular on its face, and apparently genuine.

There was no objection made by the plaintiffs that there was anything suspicious on its face, and without such objection no such contention can now be made.

If there had been such objection, the burden lay upon the plaintiffs to bring before this court proof of the fact. There has been no such attempt. The court below held that it was not suspicious, and it lay upon the plaintiffs to show that the court erred. The court in its opinion said that it appeared to be an ancient document, (pages 302, 381, record,) and this assertion must be taken to be true in the absence of affirmative evidence of its untruth.

Kirkland vs. Oates, 25 Ala., 465.

Protocol A appeared on its face to be more than 30 years old.

The sale itself took place October 20, 1817, (page 207, record,) and was confirmed on the following day, (page 208, record.)

Protocol A came from the proper custody.

It was the record of a public office of Spain.

Joseph E. Caro was keeper of the Spanish archives in 1828 and in 1835, and recites that he was duly qualified and commissioned by the President of the United States of America. (2 Cal. Land Laws, page 155, and papes 56, 57, record. See also testimony of A. V. Caro, page 40, record,) and continued to be such until succeeded by F. E. de LaRua, (testimony of A. C. Blount, page 303, record,) who, as shown by the record, was such for many years.

R. L. Scarlett, the Surveyor-General, is found in the possession of them as keeper of the Spanish archives and is admitted by the plaintiffs to have had at the time of the trial, custody of them as such, (page 111, record.)

Even if there was no admission and no proof as to these persons being keepers of the Spanish archives, the fact that they acted as such raises a presumption that they were duly appointed and acting.

McMahon vs. Leonard, 6 House of Lords, 970–984;
19 A. & E. Ency. of Law, (1 Ed.) 436–437.

The Spanish archives, then, came from the proper custody—that of the keeper of such archives.

Protocol A is shown to be genuine by all the surrounding and succeeding facts and circumstances.

Some of these are:

1. The constant reference to the sale evidenced by it in subsequent conveyances of same property and other proceedings.

2. The recognition of it by the Land Commissioners for settlement of claims in West Florida.

3. The constant assertion of title by persons claiming only under the sale.

4. The admission and acquiescence of Joseph E. Caro, the husband of Paula Rivas, under whom the plaintiffs claim, and the non-assertion of title by any Rivas heir.

This sale was constantly referred to in subsequent conveyances and other proceedings as follows:

A. In deed from Gregorio Caro, the purchaser, at the judicial sale, to Jas. Fitzsimmons, Samuel M. Smyth and John Chabeau, executed October 22, 1817. The grantor speaks of the land in controversy as "the tract of land I purchased at a public sale made of the estate of the late Gabriel Rivas on the 21st instant," (page 234, record.)

B. The same deed is before the Land Commissioners, together with all other title papers, and the same reference is found in it, (page 229, record.)

C. Joseph E. Caro, Secretary of the Commissioners and keeper of the Spanish archives, the grandfather of the plaintiffs, makes December 23, 1835, an abstract of claims confirmed by the commissioners, and therein included the claim of John Chabeau to the land in controversy and speaks of it, (page 56, record,) as follows:

"Plat A. This is a grant for 300 arpens of land made to Gabriel Rivas by the Intendant General of the Province of West Florida, John Ventura Morales, bearing date 10th day of November, in the year 1806. The said tract was sold at public auction by order of the Spanish tribunal in order to settle the estate of the said Gabriel Rivas by a judicial act of sale bearing date 20th of October, in the year 1817, and purchased by Gregorio Caro for the sum of $572.00"

Persons deriving only under this sale constantly asserted title to the property in controversy. The evidence of such assertion is:

A. The deed above mentioned conveying the title from Gregorio Caro the purchaser at the judicial sale to Smyth, Fitzsimmons and Chabeau on October 22, 1817, (page 234, record.)

B. The declaration of ownership of Chabeau's interest in common between him and Morant and Millaudon on October 1, 1818, (page 312, record.)

C. A deed from Fitzsimmons to Chabeau of an undivided $\frac{1}{3}$ of this land made on November 22, 1819, (page 237, record.)

D. An assertion by John Chabeau of the ownership of this property before the United States Land Commissioners, (pages 223, 230, record.) It is almost conclusive of the bona fides of the judicial sale that Chabeau presented to the Commissioners "original grant or title in form made to Gabriel Rivas by the intendant Morales, countersigned by F. G. Arroyo, Secretary, and dated the 10th of November, 1806," (page 229, 230, record,) showing that the custody of the grant had passed from the Rivas heirs to him, Chabeau. He also presented at the same time the other muniments of his title mentioned above, (page 229, 230, record.)

E. A deed from J. W. Exum, Marshal of the Superior Court of the West District of Florida, conveying to John Brosnaham and Henry Michelet 5-18 of the land in controversy sold by the Marshal under execution against John Chabeau on January 6, 1834, (page 319, record.)

F. A deed from John Brosnaham and Henry Michelet to Walter Gregory for 5-18 of the 300 arpents "formerly owned by John Chabeau," etc., on December 6, 1834, (page 314, 315, record.)

G. Deed from J. W. Exum, Marshal, as above, to Walter Gregory of 3-18 of Morant's interest in "the 300 arpents called the Rivas land," etc., such interest having been sold under execution against Morant on February 5, 1835, (page 318, record.)

H. Deed from Millaudon to W. H. Chase of 4-18 of the "Rivas Tract," etc., on January 23, 1837, (pages 316, 317, record.) The consideration paid for this 4-18 was $31,800.

I. Quadripartite deed between W. H. Chase, Walter Gregory and others and the Trustees of the Pensacola City

Company, a joint stock association, conveying to the Trustees certain property, including the property in controversy. See description, page 325, and the plat referred to, page 336, record, in the original transcript but not printed. This deed is dated January 13, 1837, (page 321, record.)

J. Deed from the Pensacola City Company, the joint stock association, to the Pensacola City Company, a corporation, including among other property, this "Chabeau Tract." This deed was made May 1st, 1870, (pages 336, 337, record.)

These conveyances show a continuous assertion of title by a chain of conveyances from the original purchaser at the judicial sale to Gregorio Caro on October 20, 1817, down to the Pensacola City Company, a corporation, in 1870. But these are only some of the assertions. In addition there are:

K. The platting of the land by Geo. E. Chase in 1837 for the Pensacola City Company. A copy of this plat is in the original transcript, but has not been printed. It is referred to on page 308 as the Chase map. This map continued to be recognized as a map of this tract until 1872 and 1873 when the Pensacola City Company caused it to be replatted by Harding & Lee, (testimony of W. F. Lee, pages 307, 308, and of A. C. Blount, page 304, and of Chas. Ahrens, page 73.)

L. The sale in 1837 of large numbers of these lots. An actual count shows 1149 sold by this Geo. E. Chase plan. See Schedule B attached to deed to Trustees of Pensacola City Company, mentioned above, (page 331, record.)

M. The replatting of the property in 1873 by Harding & Lee for the Pensacola City Company so as to make the streets conform to those in the Old City of Pensacola. This map has been the accepted map of the New City ever since, (testimony W. F. Lee, page 308, 309, record.)

N. The laying out of the streets on the property by the Pensacola City Company after the replatting. (Lee's testimony, page 309.)

O. The sales of lots by this plan, (Lee's testimony, page 308, and deeds conveying property by this plan, pages 340, 345, 348, 349, 352, 353, 356, 358, 360, 362, 365, 368, record.) William Fisher testifies that there were more than 300 lots

sold by the Pensacola City Company by the Harding & Lee plan, (page 311.)

P. The assertion by the Pensacola City Company of title to this tract in the various suits in chancery and in ejectment hereinbefore mentioned.

Q. The employment of agents and attorneys to look after the land, for example, Brainard & Blount, (page 303, record;) and finally,

R. The payment of taxes on this property by the Pensacola City Company and those deriving under it. (A. C. Blount's testimony, page 303, record.) (Fisher's testimony, page 310, record.) A. C. Blount knew that the taxes had been paid by the Pensacola City Company from 1857 to a period after the civil war, and Fisher knew that they had been paid by owners claiming through the Pensacola City Company for 15 years and amounting to $15,000.

Protocol A is shown to be genuine by the acts and acquiescence of Joseph E. Caro.

These acts and acquiescence of Jos. E. Caro, (outside of his actual participation in the proceedings culminating in the sale, and his receipt for his wife of her proportion of the proceeds, page 214, and pages 202, 207, 212, 216, 217, record,) were,

A. He was a witness to the deed from Fitzsimmons to Chabeaux made November 22, 1819, to this same property, (page 238.) Fitzsimmons was one of the grantees of Gregorio Caro This deed comes from book B, of the Spanish archives, and there has been made by plaintiffs, and can be made, no question of its authenticity.

B. He caused the title dependent upon this very sale to be confirmed in Chabeaux, by proving the signature to the title papers upon which the confirmation was based. (page 229, 230, record,) One of these deeds recites this judicial sale, and the others are the title papers deraigning the title out of Gabriel Rivas' estate down to John Chabeaux.

C. He, on December 23, 1835, as keeper of the public archives made under his official seal an abstract of claims confirmed by the Land Commissioners, mentioning this claim and stating therein, as heretofore shown, that "the said tract was sold at public auction by order of the Spanish tribunal in order to settle the estate of the said Gabriel Rivas by judicial act of sale bearing date 20th October, in

the year 1817, and purchased by Gregorio Caro for the sum of $572.00," (page 56, record.)

D. He confirms this last statement by making a plat of the land defining its boundaries, (page 231, record.)

E. He never went into possession of the land, (testimony of A. V. Caro, page 37.)

F. He never paid taxes upon it, (testimony of A. V. Caro, page 52.)

Protocol A was shown to be genuine by the acts of Paula Rivas and her heirs.

These are:

A. The total absence of any assertion of title until 1870.

B. A failure at all times to pay taxes, (testimony of A. V. Caro, page 52, record.)

C. A failure to expend any money on improvements. (A. V. Caro's testimony, page 54, and *passim*, record.)

D. Acceptance by A. V. Caro, who was the *factotum* of them all, of an agency of the Pensacola City Company, by which he undertook to "watch, take care of and attend to," "the landed interests of the Pensacola City Company in the City of Pensacola," and under which he did watch, take care of and look out for such interests from May 9, 1862, to September 9, 1865, (pages 43 and 44, record.) For this, he recovered a verdict against the Pensacola City Company for $600.00.

E. Absolute want of any evidence of possession by any Rivas heirs of any part of the property until after 1870, when A. V. Caro built a house on it and began to lease portions of it. This was after his agency for the Pensacola City Company terminated, and after he had bought the tract from a man named John Chabeau for $50.00. See his testimony, (page 38, record.) He evidently knew of the purchase by one John Chabeau and desired to get some standing by a conveyance from one of that name.

The documents relied upon by defendants were properly admitted in evidence.

The plaintiffs in error however say that many of the documents which we rely upon as circumstances to show that Protocol A was admissible as an ancient document were themselves inadmissible.

If the Court holds that the Protocol A was admissible in evidence because it came from the proper official custody, then it becomes unnecessary to discuss the admissibility of the items of documentary evidence subsequent to the judicial act of sale which we heretofore adverted to, for these were offered merely to show the accompanying and surrounding circumstances in order to prove the Protocol as an ancient document, and if it be otherwise admissible such proof is unnecessary.

Ex abundantia cautela, however, we discuss the admissibility and effect of them, bearing in mind all the time, however, that even though one or more was not admissible, and that the Court erred in admitting it or them, yet, there would be no cause for reversal if there yet remained sufficient, with other circumstances, to prove the Protocol to be an ancient document.

This, as we have said, because the Judge gave an affirmative charge.

We take these documents up seriatim:

Exhibit 3 (page 56, assignment of error 4, page 386)

"Abstract of claims to lands in West Florida."

There is no maintainable objection to the admission of this paper. The objection of the plaintiffs in error made when it was admitted was as set forth in the bill of exceptions, "thereupon, plaintiffs, by their counsel, did then and there except." Of course, this is no sufficient objection upon which to maintain error.

Moreover, the paper came from the custody of Scarlett as keeper of the archives. It bears the official seal of Caro as such keeper, and it contained an assertion that the land in controversy had been sold at the judicial sale relied upon by defendants, and that it had passed to John Chabeaux by mesne conveyances also relied upon by defendants, thus tending to show that there had been such judicial sale and such subsequent conveyances and to establish their authenticity. In addition, A. V. Caro had sworn (page 34) that his father had claimed the land for his wife, and this declaration of the father that his wife's title had been divested, was in contradiction of this testimony of A. V. Caro, and of course, admissible.

* * * * * * * *

It will be noted by the Court that the exceptions made in the Court below as found on page 302, and which are the exceptions to the items of evidence now to be discussed and the assignments of error (6th and 7th assignments of error, page 386, 387) are lumping exceptions and assignments, and if any one of the documents mentioned therein be admissible, the whole assignment must be pronounced bad.

It will also be noted that all the objections in the Court below to these documents are to be found in this language: "The foregoing grounds of objection are made to, and apply to, all and consecutively, to the offers heretofore made consecutively by the defendants." "The foregoing grounds" (page 300, 301, 302) were, by their very terms, applicable only to the Protocol A, except the second, on page 302, which objects specifically to the deed from Gregorio Caro to Fitzsimmons, Smythe and Chabeaux, and to it only on the ground that it had, "never been recorded or made of record in the Spanish archives."

The Judge conceived that the objections made related only to the Protocol and to its being an ancient document coming from official custody (page 302.)

There were then no objections to them which can be urged against the admissibility of the documents.

We discuss their admissibility, however, as the counsel for plaintiffs have done so.

Deed from Gregorio Caro to Fitzsimmons, Smythe and Chabeaux (pages 234, 236.)

No objection was made to this deed except that it had never been recorded. The certificate of the keeper of the archives shows it to have been recorded, and the copy of the record was offered in evidence (page 236). The objection in plaintiffs' brief that it was in English when the original must have been in Spanish is fully answered by the fact that under the 11th section act of Congress of March 3, 1825, (4 Stat. at Large 126), the original Spanish deeds were required to be translated and recorded by the officer designated, and this Book B, from which this particular deed was taken was one of the books of translation, receipted for by the U. S. Surveyor-General (Appendix D).

Deed, Fitzsimmons to Chabeaux, (pages 237, 238).

The same remarks apply to this as to the just preceding deed.

Proceedings before Commissioners (pages 226, 229 and 233).

Of course, the proceedings before these Commissioners were evidence of the acts done by the Commissioners.

The instrument of evidence here was the original Book A of the proceedings, pages 332 and 333, produced by R. L. Scarlett, and agreed by counsel (page 111) to have come from his custody.

Fourth American State Papers, page 103 (page 232) were of course admissible, and as introduced and shown by the volume itself, show the confirmation to John Chabeaux:

Bryan vs Forsyth, 19 How., 334;
Magruder vs. Perpall, 13 Fla. 611.

The proceedings preliminary to this confirmation of the Land Commissioners (pages 229, 230) were offered from the original book and stand on the same plane as the next but one preceding item.

Deed Exum to Michelet (pages 319, 321).

This is duly acknowledged, recorded and certified to, and was, of course, admissible.

We admit that it proved no title to the grantee, because the judgment was against a dead man, but it was not introduced to deraign title, but to show an assertion of title based upon the judicial act of sale, and thus pertinent to show the previous existence of such judicial act. For this purpose, it was clearly admissible.

Deed from Brosnaham and Michelet to Walter Gregory (314, 316.)

This did not convey title because founded on the preceding null deed, but it was admissible for the same reason that that deed was admissible.

Deed from Exum, Marshal of the United States, to Gregory (pages 318, 319) was not good because founded on a judgment against unknown heirs, but was admissible for the reasons just given.

Deed from Laurent Millaudon to Chase (pages 316, 317) conveyed the interest which grantors had acquired by the declaration between him and Chabeaux (pages 238 and 312) and was admissible to show a continued assertion of title derived under the judicial act of sale of October 21, 1817.

The attempted impeachment because of the large consideration paid, shows the desperate straits in which the counsel for plaintiffs are in their search for argument. They forget that the syndicate shown in exhibit 31, page 319, was attempting to acquire a large part of Pensacola (see also Geo. E Chase's map, page 306); that this Chabeaux or Rivas Tract had been taken into the City of Pensacola by act of the Legislature of February 16, 1833, (Session acts, page 110,) and that the country was then (1837) in the wild fever of speculation which preceded the panic of that year. Outside of this, the fact that the consideration was large or small cannot alter the fact that the deed was made and put on record, and was an assertion of the title to the land in controversy through John Chabeaux (page 314).

The quadripartite deed between Chase, Gregory and others, (pages 321 to 336) was intended for the same purpose as the foregoing deeds, that is, as an assertion of title procured from Chase and Gregory to the land in controversy The map attached to the deed and made a part of it (page 323) shows the Chabeaux Tract to be intended to be conveyed by the deed, as was also the interest acquired by Laurent Millaudon (misspelled in the record "Samuel Millaudon) acquired from him by Gregory and conveyed to Chase. There was no objection to the introduction of the Geo. E. Chase map or the Harding & Lee map, both embracing this tract, the former made by the Pensacola Land Co., predecessors of the Pensacola City Co., and the latter by the Pensacola City Co., itself. The suggestion that the former map was made by the Pensacola Land Co. before it acquired title to the land, has no foundation in fact in the record, and is as baseless as the statement that the Pensacola Land Co. and the Pensacola City Co. did not assert title to the land in controversy because G. O. Brosnaham testified that he was agent of the Pensacola Land

Association and had never heard of the Pensacola Land Association's claiming title to the Rivas Tract. The Pensacola Land Co., predecessor of the Pensacola City Co., was an entirely different company from the Pensacola Land Association, and changed its name to the Pensacola City City Co. in 1837 (page 324). Brosnaham did not become agent for the Pensacola Land Association until 1871 (page 67).

We submit that all of these documents were admissible, but that if any of them were inadmissible there remains enough of them to establish beyond a peradventure the authenticity of Protocol A.

* * * * * * * *

The plaintiffs contend, however, that the Protocol could not be original and genuine, because V. S. Pintado, Surveyor General of Western Florida, reported that all the archives of West Florida were shipped by Masot to Cuba and all but one became destroyed and that was taken by pirates. To this we answer:

1. That the facts as stated are not shown by the citation from White's Recopilation, quoted by the plaintiffs in error at pages 27 and 28 of their brief upon application for writ of certiorari. It appears that Pintado is speaking of "concessions and sales of land" "made by the intendency of Louisiana and West Florida," (pages 27 and 28.) This refers to the divestiture of the government of Spain of its title to lands, either by concessions or sales by the proper officers of the kingdom and not to judicial sales relating to the property of private individuals. The two great divisions of lands alienated by the crown were, "concessions and sales," (4th Am. St. Papers, p. 84,) and to these Pintado refers.

Nor was the "tribunal of lands" the court dealing with the alienation of private lands, but it dealt only with public lands.

Nor does Pintado speak of his own knowledge. His statement says that he had removed from Pensacola to Havana in 1817, (page 28, record) and consequently he did not know what was packed up in Pensacola and sent from there.

Nor did he know that the archives had been taken by the pirates. All that he can say is "as it is reported."

2. If the papers of tribunals of lands embraced papers of this character, it appears that they were left in Pensacola with Carlos Reggio at Fort Barrancas, under order from Masot, (page 29, brief.)

3. It was not true that all such papers were sent by vessel and destroyed, for we have produced the originals of a like proceeding to sell other lands of Gabriel Rivas, the original will and probate of the said Rivas and the original testamentary proceedings in the matter of the estates of Joseph and Thomas Marshall; these were not forwarded, were not lost, and now exist, and why not Protocol A?

4. But, if the facts as claimed by the plaintiffs in error exist, they did not exist for the purposes of this case.

We deny that they were historical facts of which the court would take judicial notice. They were not matters of general history presumably known to all intelligent men, but only relating to purely local matter.

If historical facts, and the court would take judicial notice of them, it would only do so upon authenticated suggestion by counsel.

McKinnon vs. Bliss, 21 N. Y. 206.

And the court's judicial notice would not be evidence before the jury without any introduction before them of the facts, and, therefore the jury could not take the alleged facts into consideration.

Ibid.

* * * * * * * *

It is also argued that the Protocol A could not be genuine because it does not show that it was ever filed or recorded anywhere. No instance is known to us, and we have never heard, of file marks being placed on documents deposited in the Spanish registry. Some documents were recorded or registered, but not a document like this which consisted of detached original papers filed from time to time by the parties interested, as the proceedings progressed, and each paper was "united" with the rest. Neither the counsel nor any one else can cite any instance of the recording of a Protocol. With much experience in Spanish titles, we have never seen or heard of such a proceeding

No law is shown requiring such proceedings to be registered, and no evidence is offered that it was customary to do so.

The grant to Gabriel Rivas which was registered and which the plaintiffs in error seek to analogize to this was a very different proceeding. It was an alienation by the crown of public property, and it was usual to observe the utmost solemnity and care to keep the records of such alienation. We have, however, been unable to find any such law or custom with reference to proceedings, either judicial or conventional, affecting private property, and we have never seen any reference to a record of such proceedings, and we have never seen a protocol that had been recorded or registered. The invariable course seems to have been to build up a file of original papers by "uniting" and "extending" each consecutive paper to the proceeding. See petition of Eugenio Sierra, in which he asks that his bill may be "united to the proceedings," (page 206, record,) the order of Hernandez "that it be united in continuation," (page 206,) and the order of Masot that the receipt of Sierra "be united to this proceeding that it may appear," (page 212,) etc., etc.

We are asking this Court to cause to be put before it the original papers in order that it may see how the record is built up.

B.

The land sold under the judicial sale was the land granted to Gabriel Rivas, and therefore, the land in controversy.

The description in the act of sale signed by all the heirs is, the "300 arpents of land belonging to the estate of Gabriel Rivas, deceased," (page 207.) This is entirely unambiguous, and can be made ambiguous only by showing that there were two or three more parcels of land embracing 300 arpents belonging to that estate There is no such showing, but on the contrary, the only evidence is that there was only one such tract.

Gabriel Rivas in his will declared "that my property consists of the following: * * * and three hundred arpents of land outside of the city limits," (page 122). Maria Moreno, his wife and administratrix in the proceedings leading up to, and a part of the sale, makes a statement, "of the property left by my deceased husband, as appears by the

will, of which part of them has been sold, also of what remain at his death, to-wit: " * * * * * there remains at the place called Bayou Texar 300 arpents of land that were granted to me by this government," (pages 189, 190).

She, in a petition to the Governor, refers to her account, of which the statement is a part, and asks that he "may order what you deem most convenient," (page 197).

Eugenio Sierra, curator of the minors, refers "to the accounts presented by the widow Rivas," and says that the "300 arpents of land should be valued and sold," (page 199).

The Governor makes an order, "let the arpents of land belonging to this estate be valued and sold at public outcry at the time to be ordered. Annex copy of the will executed by Gabriel Rivas," (page 216). He thus made a part of the order, the will which referred to this land as the only 300 arpents belonging to Gabriel Rivas.

The property is valued (page 201), and then the Governor orders to be sold on Monday, the 20th instant (October, 1817,) "the 300 arpents of land" (page 204).

Joseph E. Caro, representing his wife, and John Malagossa "as to what refers to (in the previous proceedings) the 300 arpents of land," consented to the sale (pages 215, 216).

When the facts show so plainly the description of the land conveyed, it is useless to add an argument.

Of course, extraneous evidence can be resorted to to locate property designated in a deed, but not described by metes and bounds, and this applies to sales by administration to pay debts.

Salstonstall vs. Riley, 28 Ala., 164.

Wright's Heirs vs. Ware, 50 Ala., 558.

All succeeding facts show the land sold at the sale to have been the land granted to Gabriel Rivas. The purchaser at the sale, Gregorio Caro, sold to Fitzsimmons, Smythe and Chabeaux. Fitzsimmons sold his interest to Chabeaux, and Chabeaux presents his claim to the Land Commissioners and introduces as evidence of his title a deed from Gregorio Caro to him, and "the original grant of the said tract of land to Gabriel de Rivas, dated 10th November, in the year 1806," (page 226,) together with plat and survey accompanying it (page 229); and Joseph E. Caro proved the signatures to the title papers (page

230); the Commissioners confirmed the title to this land to Chabeaux (4th American State Papers, page 103, number 46), describing it as the land granted to Gabriel de Rivas. Caro afterwards certified that the title of this property granted to Gabriel Rivas, had, through this judicial sale, and mesne conveyances, come down to John Chabeaux, (page 56,) and the abstract and plat furnished by him *showed it to be the identical land*; and the holders through the sale—the Pensacola Land Company and the Pensacola City Company—had it platted, and sold hundreds of lots from it by such plats.

C.

It is further contended that the act of sale, if genuine, was not valid under the Spanish law.

The judicial act of sale to Gregorio Caro, October 20th, 1817, evidenced by Protocol A, was valid.

We will not repeat what we have said as to the effect of the passing of a subsequent conveyance of the same property before Jose Masot, Governor of West Florida. We have shown that the validity is not open to question because the passing of the title subsequently before the Governor was a judicial decree that the title at that time was in the seller.

If its validity is open to question, the burden is upon the persons alleging its invalidity to show it.

Apart from the presumption in favor of the validity of the decrees of foreign courts, we have an adjudication of such validity by the land commissioners appointed to settle these land titles, (4th Am. St. Papers, Claim 46, p. 103,) having the titles before them, (pp. 223 and 230, record,) confirming the title in John Chabeau, and the action of Congress (4 Stat. at Large, p. 156, Sec 1,) confirming this confirmation.

As we have said, the confirmation by the commissioners was evidence of title.

Ryder vs. Inerarity, 4 Stew. & Por. 29;
Hallett vs. Doe, 7th Ala., 900.

Of course, if it is evidence of title, the plaintiffs must overcome it by proving the invalidity of the act of sale.

The Spanish officials directing and conducting the judicial sale, October 21, 1817, had authority under the Spanish law so to do.

Plaintiffs in error content themselves with an assertion to the contrary, but they cite no authority and we might rest content with their failure to do so, but we prefer to show that this Court will presume that the officials had authority and will find that, in fact, they did have such authority.

It is not necessary that we should prove that the Governor and his assistants were authorized to make the sale, for by the comity of nations it will be presumed that they acted within their authority.

1st Cal. L. L. 721.

Nothing could be stronger than the language of the Supreme Court of the United States in a case involving a judicial proceeding conducted under French authority in the territory afterwards becoming the state of Missouri:

"No principle can be better established by the authority of this court than 'that the acts of an officer, to whom a public duty is assigned by his King, within the sphere of that duty, are prima facie taken to be within his power. The principles upon which it rests are believed to be too deeply founded in law and reason to be successfully assailed. He who would controvert a grant executed by the lawful authority, with all the solemnities required by law, takes on himself the burden of showing that the officer has transcended the powers conferred upon him, or that the transaction is tainted with fraud.' (8 Peters, 452, 453, 455, 464; 9 Peters, 134, 734, 735; S. P., 6 Peters, 727, &c., and cases cited; 10 Peters, 331; S. P., 1 Paine, 469, 470.) *The same rule applies to the judicial proceedings of local officers to pass the title of land according to the course and practice of the Spanish law in the province, (West Florida.)* (8 Peters, 310.)

"Papers translated from a foreign language respecting the transactions of foreign officers with whose powers and authorities the Court is not well acquainted, containing uncertain and incomplete references to things well understood by the parties, but not understood by the Court, should be carefully examined before it pronounces that an officer holding a high place of trust and confidence has

exceeded his authority." U. S. vs. Perchman, 7th Peters, 51.

This Court, in a case where the instrument had been executed by a syndic, and it was objected that there was no evidence of this authority, but (as in this case) the title had been submitted to the United States Commissioners, and confirmed by them, and claims had been asserted under it from time to time, presumed without other proof, the authority of the syndic and commented upon the blending of the Civil and Military powers in the Commandants of Posts (such as Pensacola was) and said that these were facts "which no Court can disregard in acting upon transfers of property between individuals." Stoddard vs. Chambers, 2nd How., 316.

"Where the act done is contrary to the written order of the king, produced at the trial, without any explanation, it shall be presumed that the power has not been exceeded; that the act was done on the motives set out therein, and according to some order known to the king and his officers, though not to his subjects, (7 Peters, 96; 8 Pet. 447, 451, 454, 456,) and courts ought to require very full proof that he had transcended his powers before they so determine it."

"He, [the king,] was not willing to expose the acts of his public and confidential officers, and the title of his subjects acquired under those acts, to that strict and jealous scrutiny, which a foreign government, interested against their validity, would apply to them, if his private instructions or particular authority were to be required in every case."

Strother vs. Lucas, 12 Pet. 437, 438, 439.

This presumption is strengthened by a like assumption and use of power by another Governor, in the sale, for a like purpose, of property of Jos. Marshall, deceased, (pp. 434, 435, 436, 453, 454, 455 record,) and by the recognition of the title as valid in the various ways hereinbefore set forth. The fact that the commissioners confirmed the title would, if there were doubts, be of great weight, because upon the commission confirming this claim, (4th Am. St Papers, p. 103,) was Jos. M. White, the author of the new Recopilation and compiler of the California Land Laws, a man probably possessed of more knowledge of Spanish law than any other American. So too Jos E. Caro himself, who was "quite a Spanish scholar" and keeper of the Spanish Archives, (tes-

timony of A. V. Caro, p. 40, record,) and Secretary of the Land Commissioners, assisted in the confirmation of the claim.

But we need not rely upon presumptions, for we have proof of the powers of Jose Masot.

Masot was Governor from November, 1816, to May, 1818.

2nd Cal. L. L. p. 256.

And as such sub-delegate.

2nd Cal. L. L. 374.

And President of the Cabildo, the provincial council.

2nd Cal. L. L. 730.

And as such all "matters and affairs of government were under their exclusive jurisdiction."

2nd Cal. L. L. p. 31.

"A civil and military governor, it has been said, is the political representative of the king in the provinces; he is commander of the army and navy, the supreme, civil and criminal judge, keeper of the archives," and "*the governor's court* has civil and military jurisdiction throughout the provinces."

2nd Cal. L. L. 729.

During the time of the constitutional Cabildo, there were regularly organized courts from October 9th, 1812, to December 28th, 1814, when the king regaining power changed the form of government, abolished the former courts, and decreed:

"Seven. The judges formerly appointed as judges of original jurisdiction shall also cease to exercise their functions and to enjoy the immunities granted to them by the Cortes, and in their stead the functions prescribed by the laws and ordinances concerning the intendants shall be exercised by the Sub-Delegates, Superior Alcaldes, Corregidors of lieutenants, using the same denomination as practiced heretofore."

2nd Cal. L. L. p. 167.

Under the government as it existed prior to October 9th, 1812, and after December 28th, 1814, the Governor constituted the court, and had judicial powers, as will be seen by reference to the quotations above from p. 729, 2nd Cal. L. L.

In the exercise of such powers they were practically untrammeled by any requirements of law or orders of the king.

It is said, "subjects have no obligation to investigate or know the orders and instructions of a secret nature which are given to the Viceroys, in which bounds are set to their power, for if they do not obey them they are subject to reprehension or banishment, and what they may perform must be sustained because they are in quality of factors, or substitutes to royalty, for whose actions he who named them is accountable."

1st Cal. L. L. p. 367.

"It is fit that the Viceroys and *Governors* of the Indies never cease to bear it in mind" *i. e.*, the Common Law, "still as regards the municipal duty of these the whole or almost the whole, is left to their discretion or prudence, because in the conflict or concurrence of these Cedulas (Royal Provisions) and orders de providende, they are not to attend so much to the dates and orders of these, as to that which may appear for them most convenient for them to execute." *Ibid.* Speaking of the king's selection of Viceroys, or *Governors*, (1st Cal. L. L. p 368,) it is said "generally choosing them from titled gentry and the most worthy in Spain of his chamber of council, causing them, in his provinces which are entrusted to them, to be looked upon, as I have said, as their own person, to be their substitute." "From which it happens, that, regularly in the provinces which are entrusted to them, and in every case, and in all things which are not specially excepted, they possess and exercise the same power, authority and jurisdiction, with the king who names them."

1st Cal. L. L pp. 369 and 370.

"The first established rule and sentence is, that viceroys can act and despatch in the provinces of their government in cases which have not been specially excepted, all that the prince who named them might or could do, if he were, himself, present."

"And speaking of this, the lawyer Ulpiano dares to say in an absolute style 'that there is no case in the provinces which cannot be despatched by them' and the same doctrine with many examples to conform it are taught to us by many other texts of law, civil, canonical and royal."

1st Cal. L. L. p. 371.

"The viceroys, as holding the place of the king, can act and decree in the same manner as the royal person, and must be obeyed as one holding his authority, without re-

plying, without interpretation, under the penalties to which are subjected those who do not obey the royal commands, and such laws as may be imposed by them, and that which they ordain and command, the king will hold as firm and valid."

"Even when they exceed their powers or secret instructions they must be obeyed like the king himself, although they may transgress and are afterwards punished for it."

1st Cal. L. L. p. 372.

Of course, it is not necessary to say to one familiar with Spanish laws and history, that the king's power, so far as the government of his subjects is concerned, is absolute, and he an absolute monarch, and he himself the fountain head of justice, and of the administration of law, and the governors standing in his place had a right, if they saw fit, to direct at their will all judicial proceedings, including, of course, the administration of estates, and the transmission of titles from such estates to purchasers at sale had under such administrations.

For a full statement of the character of the king's power see:

U. S. vs. Arredondo, 6 Pet. 714.

It should be clear that he, Masot, had the power to conduct the proceedings in question.

The plaintiffs also contend that the judicial act of sale was invalid because Paula Rivas was a married woman and did not sign the act of sale.

It was not necessary for Paula Rivas to sign the act of sale, for it was a testamentary sale for the payment of debts.

This was a proceeding by an Executor, acting through the court, to sell the land of a decedent, to pay debts and funeral expenses, etc. His debts, etc., for example, were his promissory notes, (pages 190 and 192,) digging his grave, masses for his soul, coffin, physician, etc., etc., (page 189 to 196, record.)

We have shown that Maria Moreno presented her accounts showing indebtedness of the estate, e. g.,

Gabriel Rivas' note for $160.00, page 190;

Gabriel Rivas' note for $500.00, page 190;

Gabriel Rivas' note for $173.00, page 192;

For articles during his sicknesss, $24.50, page 194;

For digging his grave, $1.00, page 194;
For masses for his soul, $7.00, page 194;
For his coffin, $8.00, page 195;
For physician's services in last sickness, $57.50, page 206;
Etc., Etc.

This last account "owing to the great scarcity of money that has been, and the estate not being closed," he (the physician) "had not presented for payment" (page 206). Upon presentation, it was ordered paid, and the sale was made to embrace it, and it was paid after the sale (page 210). The sale was clearly a sale for the payment of debts.

There is no showing as intimated by plaintiffs (page 31, brief,) that the heirs obtained possession of this property and that therefore the succession terminated and there could be only a partition. Even if such be the law (which we deny) there is no particle of evidence to which it can apply. The whole evidence shows that the widow and executrix remained in possession of the property, repairing it out of the funds of the estate, (vouchers 1, 2, 3 and 4, page 189,) and for the payment of debts and the support of the minor children (page 195).

Apparently the idea of the counsel that this was a partition and not a testamentary sale is an after-thought, occurring subsequently to the making up of the bill of exceptions, for we find on page 146 this statement as made by counsel for plaintiffs in their bill of exceptions:

"Defendants offer a translation which purports to be a petition by Maria Moreno, as Executrix, for the sale of this particular property in controversy in order to pay certain debts of the estate, and the proceedings upon that petition, the sale and the disbursion of the money arising from that."

And on page 155, we find this:

"Defendants offer proceedings of Maria Moreno to sell this particular piece of property for payment of debts and disbursion of proceeds."

Following the first recital just made comes the translation of this protocol, and following the second comes the original language of the protocol.

Such a sale is not a voluntary act upon the part of the heirs but as to them is *in invitum*, and they are never required to sign.

In all jurisdictions, the only necessary party signatory is the person authorized to make the sale or persons appointed for that purpose.

A proceeding of this kind is a proceeding *in rem*.

Grignon's Lessee vs. Astor, 2 How. 319, 338, 339;
Florentine vs. Barton, 2 Wall. 210;
Ennis vs. Smith, 14 How. 400, 430;
Saltonstall vs. Riley, 28 Ala. 164;
Wyman vs. Campbell, 6 Port. 233, *et seq.*

A judgement in such case cannot be attacked collaterally on the ground that the heirs of deceased have not had notice.

Grignon's Lessee vs. Astor, 2 How. 319, 338, 339;
Florentine vs. Barton. 2 Wall. 210;
Saltonstall vs. Riley, 28 Ala. 164;
Wyman vs. Campbell, 6 Port. 219;
Thaw vs. Richie, 136 U. S. 548;
Manson vs. Duncanson, 166 U. S. 547;
1st Smith's Leading Cases, part 2, p. 1122.

A fortiori a judgement in such proceeding cannot be attacked because the heirs have not assented to it, nor signed any papers therein.

But even if it was a partition sale it was not necessary for Paula Rivas to sign the act of sale.

No authority has been or can be shown that a party to a partition suit is necessarily required to sign a deed to effectuate it.

A contrary contention is based upon an ignoring of the fundamental distinction between a voluntary partition by co-tenants, and a partition by act of court.

This sale, if a partition sale, was a partition through the agency of a court. Maria Moreno, widow and executrix, and Eugenio Sierra, guardian for the minor children, united in a prayer for the sale, (page 197 and 199.) Service of notice of the proceedings was made on all the heirs, that upon Paula Rivas being made upon her husband, Jos. E. Caro, at every step, and finally after the sale, the money was ordered by Masot to be paid to her husband, (page 212,) and it was so paid, and he receipted for it in her name, (page 214.)

The other contentions of plaintiff as to the invalidity of the sale as a partition sale are without merit.

Some other contentions have been made as to its validity, each of which we discuss:

1. The first contention is that the succession should have been limited to a year, and that a sale by an Executrix made after that time was void, for the title to the property had gone to the heirs.

The answers to this are:

A. That this would not affect the validity of the sale for it would only show that it was a partition sale, and a necessity of having the heirs before the court. We shall discuss, directly, the question of its validity so far as affected by the presence or absence of the heir, Paula Rivas, in the proceedings.

B. That no law is cited to show that an executor's sale made under the order of the court after the expiration of the year would not be valid. The lapse of time would not extinguish the succession, but would cause a loss of power in the Executor acting *suo vigore*, and not a loss of power in the court to authorize him to make a sale.

Gaines vs New Orleans, 6 Wall., 646.

The court therein says:

"In Louisiana, by the law in force when these sales were made, the power of executors to make sales *without the order of court* terminated at the end of a year from their appointment. This is not only clear from the law itself, but also from the judicial decisions of the State. Chief Justice Martin, in Donaldson vs. Hall, 7 Martin, (N. S.,) p. 113, says, a sale by executors *without an order of court*, and by private contract, is void; and to the same effect is the case of Lanfear vs. Harper, 13 La. Ann., 548. The defendants having failed to prove that any order of sale was ever given to make these sales, they are nullities, and confer no titles. And this is the decision in Patterson vs. Gaines, 6 How., 550, which is re-affirmed in Gaines vs. Hennen, 24 How., 553."

C. That this question was necessarily considered by the court which authorized the sale. Chief Justice Marshall says:

"Of its own jurisdiction, so far as it depends on municipal

rules, the court of a foreign nation must judge, and its decisions must be respected."

Rose vs. Himely, 4 Cranch, 276.

We shall discuss this question hereafter.

The further objection is intimated that the proceedings were not valid because no proper notice was given to Paula Rivas.

This objection was not given in the court below, and we do not think that in the absence of such objection on this ground this court would consider it here; but this litigation has been so interminable, that we desire that this court shall pass upon any and every objection that has been made by the Rivas heirs, or suggested to us, or which may occur to the court itself, in order that if this court decides in our favor,—as all other courts to which the case can go have done,—the matter may be finally foreclosed.

In considering this question, we must remember that:

The judicial sale was a judgment rendered eighty-five years ago, by a foreign court of general jurisdiction relating to real estate within the territorial limits of its jurisdiction, and belonging to persons domiciled within such jurisdiction, and jurisdiction over the person of Paula Rivas will be presumed.

The question is as to the validity of the decree as dependent upon a service made upon the wife by delivery of notice to the husband.

Under the law of Louisiana, such service seems to be good, and we assume that the law of Louisiana is the same as the civil law of Spain.

See Oglesby vs. Sillom, 4 Woods, 72.

If we do not prove the civil law, the presumption is that the law of Spain was the same as the law of the forum, and under the common law in a suit against the wife, service upon the husband was sufficient.

22 A. & E. Ency. of Law, (1 Ed.) 157.

Outside of these considerations, though, the service must be presumed to have been properly and validly made.

As the decree of a foreign court, every intendment will be made in favor of this proceeding.

Strother vs. Lucas, 12 Pet., 437, 438.

Keene vs. McDonough, 8 Pet., 306, 310.

As the decree of a court of general jurisdiction, the same intendments must prevail even to the extent of presuming jurisdiction of the parties when the court has jurisdiction of the subject matter.

17 A. & E Ency. of Law, (2 Ed.) 1073, 1074, 1075.

That this was a court of general jurisdiction cannot be questioned, for as we have shown, the Governor was supreme judge, etc., viceroy of the king and possessing in West Florida the same power as the king.

Without any showing, however, that the court was anything more than a probate court, it would be held to have general jurisdiction.

17 A. & E. Ency. of Law, (2 Ed.) 1076.

And as such, if the local law so provided, had authority to sell the estates of decedents for the purpose of partition and distribution.

Robinson vs Fair, 128 U. S., 536, 585, 586.

And many such courts have such authority.

Freeman on Cotenancy and Partition, Sec. 550, (2 Ed.)

1 Washburn on Real Property, 718, Sec. 7;

Robinson vs. Fair, 128 U. S. 85.

And the presumption in favor of the judgments of courts of general jurisdiction extends to presuming that jurisdiction of the person has been obtained even though the record is silent on the subject. To use the language of the Supreme Court of California:

"If a judgment is rendered against the defendant by a court of general jurisdiction, it will be presumed that the court acquired jurisdiction of the person unless the contrary appears affirmatively in the record."

Sharp vs. Daugney, 33 Cal. 505;

Carpenter vs. Oakland, 30 Cal. 439.

Even though the record affirmatively shows that there was no appearance for defendant.

Weaver vs. Brown, 87 Ala., 533.

This is particularly so in the case of foreign judgments, upon which an attach will not be successful because the only jurisdiction was obtained by the entry of appearance by an attorney when the authority of the attorney was not denied.

Richie vs. McMullen, 159 U. S., 235.

And an appearance by an attorney will be presumed to have been authorized.

Lawrence vs. Jarvis, 32 Ill., 304;
Capling vs. Herman, 17 Mich., 536.

And in the case of ancient judgments, though the necessary fact does not appear, service will be presumed, though not apparent.

"After a lapse of years, presumptions must be made in favor of what does not appear."

Thompson vs. Tolmie, 2 Peters, 547.

"It is certainly the policy of the law to maintain judicial sales and every reasonable inducement should be indulged in to uphold them."

Manson vs. Duncanson, 166 U. S. 547.

And in the case of an ancient partition sale, it is said:

"Strong presumptions are indulged in, in all systems of jurisprudence, and particularly so in ours, in favor of the correctness of judicial proceedings so old as this is. Some of the authorities say we will presume almost anything, even the existence and loss of records when the actual record itself is imperfect, rather than undo transactions which have rested in repose so long."

Baker vs. Prewitt, 54 Ala., 557.

And also in a matter involving an ancient partition sale, the Circuit Court of Appeals of Kentucky, speaking of whether the record showed that the defendants had been summoned, says:

"Yet it does not show that they were not, save so far as this is to be presumed from the absence of any summons showing it. After such a lapse of time, however, it must be presumed that the judgment of a court of general jurisdiction was rendered when all the proper parties, and who are made parties in the pleadings, were before it by proper service of process. If a record shows nothing to the contrary, such a presumption after such a lapse of time should be indulged for the proper protection of innocent parties and the stability of titles."

Best's Ex'r vs. Van Hook's Adm'r, 11 Ky. Law Rep. 753; 13 S. W., 121.

In this case the presumptions which would have to be indulged in are neither numerous nor violent.

The record shows that upon the presentation of the petition, Masot, the Judge, ordered that notice be given to

the "widow, the heirs of lawful age, and the curator of the minors," and that notice was given at every step to Joseph E. Caro for his wife, and that he, whenever occasion arose, signed the proceedings for her.

In order to sustain this proceeding it is entirely sufficient to presume that by the law of Spain, service upon the husband in a proceeding to affect the wife's property was legal and sufficient, or that if she was not properly brought into court he was her attorney and agent in the proceeding, having authority to represent her.

A constructive service upon one person for another, when the former bears such relation to the latter that there is a duty to communicate the fact of service, and where such communication would be natural and probable, is by no means unusual in this country. For example:

In Florida, McLane vs. Piaggio, 24 Fla., 71; in Louisiana, Oglesby vs. Sillom, 4 Woods, 72.

Thus, it is usual to make service upon a person at the residence of another, effective as against such other, and it requires no violent strain to presume that such was the law of Spain. Paula Rivas was presumptively domiciled with her husband, and it is not an undue presumption, if the law required him to be at the domicile at the time of service, to presume that he was at such place.

Nor is it difficult to presume that by the law of Spain, service upon the husband in a case affecting the wife, was service upon the wife. Masot had been Governor for a long time; he had conducted other proceedings like this, for example, that for selling the lot to Edward Townes, (pages 130 to 146, record,) and he knew whether or not the service was effective. He had also skilled assistants in the Auditor of War, etc., and they seem to have had no doubt upon the subject.

Not only, however, may we presume the law to have been complied with, but even if the law required that things should be done which the record does not show, we may presume that they were done.

Authorities supra.

Thus we may assume that Jos. E. Caro, the husband, was specially authorized by Paula Rivas, his wife, to represent her. She, necessarily in the small colony of Pensacola, knew of the condition of her mother; of her mother's

petition and of the public sale, and the strong presumption is that if her assent was necessary, she gave it.

Under the Spanish law as we find it "every person may be attorney for another who is not prohibited by any of the laws of this code."

1 Moreau & Carleton's Partidas, p. 113.

Husbands, so far as our research extends, were not so prohibited.

And the appointment of an attorney might be verbal.

Ibid. p. 117.

The word attorney, as above used, comprehended not only attorneys-at-law, but attorneys in fact, but not advocates.

Ibid. p. 122-131.

In view of the facts, which we have just mentioned, of the receipt of the purchase money by Joseph E. Caro, of the publicity which necessarily resulted from the public sale in the presence of her husband, (Jos. E. Caro,) of her brother, (Gabriel Rivas,) of her uncle, (Fernando Moreno,) and of the advertisement in the newspaper, of the sale of the property under execution in the case of Lawrence Millaudon vs. John Chabeau, (see deed Exum to Brosnaham and Michelet, p. 319, record,) and of the silence of Paula Rivas all this time while her property was being disposed of, we may readily presume that she consented to the sale and put that consent into a verbal authority, or into a written authority which is not found among the proceedings.

The law of Spain made service upon Joseph E. Caro and participation by him in the judicial proceedings service upon and participation in such proceedings by his wife.

It seems, moreover, that the Spanish law expressly authorized the service against the husband and authorized him to appear and represent his wife. Were we certain of this it would not have been necessary or useful to invoke the doctrine of presumptions, as above, but we realize the temerity of asking this court to assert with certainty the Spanish law upon the subject from mere extracts from the books on Spanish law accessible to the American lawyer.

We find it declared that under the Spanish law suits could be brought against persons, (other than those men-

tioned,) by suing them directly, their attorney, (personero,) or their heirs.

1 Moreau & Carleton's Partidas, pp. 34 and 35.

Married women were not mentioned as persons who could not thus be sued, so that we have quite a clear declaration that a suit against a married woman could be brought against her attorney.

Connecting this, with the law already quoted that she might create an attorney verbally, the court should have no difficulty in finding that Jos. E. Caro was the attorney of his wife, and was sued as such.

We have, however, seemingly more direct authority, for it is also declared:

"No one can take upon himself to act as attorney for another or to institute any suit for him unless authorized by him to that effect, except a husband for his wife, or a relation for a relation as far as the fourth degree, or others with whom he is connected by marriage, or for his father-in-law, or his son-in-law, or his brother-in-law, and likewise for his freedman. In all these cases they may reciprocally institute suits for one another without any letter of attorney, unless where they claim something contrary to the wish of the person in whose name they sue."

1 Moreau & Carleton's Partidas, p. 116.

Apply this in connection with the extracts above and the logical result seems to be that Jos. E. Caro had a right, without authority from his wife, to represent her in suits as attorney in fact, and that as her attorney he could be sued for her. If this be the law, and we find nothing to qualify it, it seems evident that service upon Jos. E. Caro was valid service upon his wife, and that the decree under consideration bound her.

If this be not perfectly clear, yet it is susceptible of this construction, and it is evident that unless we presume that Masot had before him evidence of authority to Caro from his wife, he must have decided that the service upon Caro was sufficient, under the law of Spain, to bind the wife, and the court having thus considered the law of its own country, the court of no other country will reverse that decision.

3.

Any right which the plaintiffs may have had to the property in controversy was lost before the beginning of this action by the bar of the statute of limitation.

In Florida, adverse possession under cover of title by deed, judgment or decree, contiued for seven years, bars the true title. The statute is set forth in Appendix D.

The Pensacola City Co. and its co-complainants in the suit of W. H. Davidson, et al. vs. J. C. Pettersen, et al., held this property in controversy from June 17, 1889, to the date of this suit, Jan. 11, 1902, and thus acquired title to it.

On March 4, 1887, the complainants mentioned filed a bill in chancery (p. 58,) in Escambia County, Florida, Circuit Court, to enjoin the Rivas heirs mentioned therein, John B. Caro, John Lavalette, et al., and the assigns of the other Rivas heirs, from interfering with the possession of this tract of land, and to quiet the title in the Pensacola City Co. and its assigns (pages 58 and 66.) In the suit William Fisher was appointed Receiver in April, 1887, and took possession of the tract of land at once, and collected rent from the persons thereon. (Fisher's testimony, pages 89 and 309.) He has been "in possession ever since, collecting rents, and exclusive possession of all the property," except two or three lots which he gave to A. V. Caro (ib.)

Thus, ever since the final decree, Fisher, as the agent of the Pensacola City Co., and those holding under it, had been in possession of the property under the color of title conferred by the decree, collecting the rents and paying the taxes. This makes a valid title by the statute of limitations. Plaintiffs say, however, that he was in as Receiver, and that consequently his possession was for both sides of the controversy. This was true until the final decree, when the title was decided to be in the complainants, and he became their agent, when his possession became adverse to the defendants in that suit.

The plaintiffs say, however, that the decree of June 17, 1889, was a nullity because Judge J. F. McClellan who rendered the decree was disqualified. We do not propose to discuss this question here, but will simply state that

some of the defendants sought to set aside the decree upon that ground; the Circuit Judge decided the decree to be valid, and the Supreme Court of Florida affirmed this decision, (see a copy of this proceeding hereto attached as *Appendix 10, and the decision of* the Supreme Court of Florida in the case of John B. Caro, et al. vs. W. H. Davidson, et al., 36 Fla., page 36.)

Whether this decree was or not a nullity, however, is immaterial, for it was in writing, and purported to decree the title to be in the Pensacola City Co. and its assigns, and this was color of title, even though the decree was void.

Carn vs. Haisley, 22 Fla., 317.

The foregoing facts are uncontradicted. The plaintiffs, however, assert that the holding of Fisher was not adverse because he bought a part of the tract from J. W. Frater, who bought it from A. V. Caro, and because William Fisher and William A. Blount, who acted as his attorney, thereby recognized the Rivas title.

This contention again shows the desperation of the plaintiffs' case, for the facts as developed by the testimony are that in 1846 the Trustees of the Pensacola City Co. sold to Henry Ahrens lots 1 to 5 in square 18, Geo. E. Chase plan of the City of Pensacola (see deed, page 51). The lots came to Chas. Ahrens from his uncle Henry Ahrens (page 73). By mistake, Chas. Ahrens was, because of his possession of these lots, made a defendant to the bill against the Rivas heirs, and the final decree thereby adjudged the title to be in the complainants in that bill, and not in Ahrens. After this final decree, he (Chas. Ahrens) (1891) sold these lots to A. V. Caro, (see Caro's sworn petition, page 86.) and on January 27, 1892, Caro filed a petition with the Court which had pronounced the decree, stating the foregoing facts, and asking the Court to direct the Receiver to desist from asserting a right to these lots. Fisher and Blount consented to the granting of the petition, and the Judge made the order (page 88). J. W. Frater bought the lots from A. V. Caro and sold them to William Fisher (Frater's testimony, pages 84 and 85, and Fisher's testimony, pages 85 to 88.) This is the proceeding (whereby A. V. Caro, a Rivas heir, bought property held under the Pensacola City Company's title, and described by its map, recognized that title and profited by it,) which is made the foundation for the absurd contention that the attorney who

had been fighting successfully the Rivas title for years, and had obtained a final decree declaring it of no validity, deliberately acknowledged it to be good.

The suggestion also that Caro has been in possession of a part of the land in opposition to the title of the Pensacola City Co., is disposed of with equal effectiveness by the fact that Fisher gave him these lots as a charity, and under an agreement which refused to recognize any title of Caro in said lots (see Fisher's testimony and the agreement therein, pages 309, 310.)

4

The plaintiffs were not entitled to recover by virtue of a prior possession.

This is for the reasons:

A. That in order that a person without title may recover on the ground of prior possession against a subsequent occupant, such occupant must have entered upon and ousted the plaintiff from possession. Recovery cannot be had merely because at some past time the plaintiff had been in possession.

Sabariego vs. Maverick, 124 U. S., 297.

In this case there is no showing as to when the defendants went into possession, or that the plaintiffs were then in possession. Defendants cannot be presumed to have gone into possession violently or in bad faith or before they obtained their deeds, and all the deeds, except one, bear date subsequent to the time when the Receiver was appointed, and all but three bear date subsequent to the final decree. Of course, the plaintiffs had no possession after these dates.

B. That such possession as the plaintiffs had at any time was, as we have shown, only a scrambling possession, and in such case the legal possession is with the true title.

Caro vs. Pensacola City Co., 19 Fla., 766.

Wilkins vs. Davidson, 36 Fla., 39.

The legal title has been shown to be in the Pensacola City Co. and its assigns. Besides Caro, through his tenants, had possession of certain detached portions of the tract (where he had any possession at all) and the Pensacola City Company and its assigns had possession of other detached portions, and there is no showing of any taking possession by defendants of any of the portions occupied by the Rivas

heirs. Besides, the defendants are not trespassers, but hold under parties complainant to the decree above mentioned, (Peter Knowles, Walter Tate, C. C. Yonge, E. A. Perry, etc., etc.,) a decree which has been held to be valid upon appeal. Wilkins, et al. vs. Davidson, et al., 36 Fla., 36.

There was no testimony which required the submission of the cause to the jury.

In order that the defendants should succeed, it was only necessary to show:

That the title was divested out of the Rivas heirs by the judicial act of sale; or

That it was divested out of them by the statute of limitations.

To demonstrate the first, it sufficed to make it appear:

That there had been such sale, and

That it was valid.

Whether it was or not a valid sale was a question of law for the Court. Whether it was a sale was, also, in the first instance for the Court, for the Court was required to determine preliminarily whether the evidence showing it was admissible either as a public record or as an ancient document.

If the Court was correct in admitting it as a public record, it, itself, was *prima facie* evidence, and the case of the defendants was made out unless the plaintiffs introduced or found in the case evidence showing it to have been forged or false.

If the Court was correct in admitting it as an ancient document, it, itself, was *prima facie* evidence of its authenticity, and the case of the defendants was made out, unless the plaintiffs introduced or found in the case evidence showing it to have been forged or false.

There is no question that the Court was correct in finding that it was admissible as a public record, and as little that it was correct in finding that there was sufficient evidence to admit it as an ancient document.

The only question then is whether there was any evidence from which the jury could reasonably find that the *prima facies* created by its introduction had been overcome; or, to put it more strongly for plaintiffs, whether there was any evidence from which the jury would be allowed to find that the instrument was not a genuine instrument.

We submit very confidently that there was not.

There was not introduced by either party one particle of oral testimony touching any act or fact transpiring before 1848, when A. V. Caro testified that his father claimed the property to be his wife's. All the evidence of acts or facts prior to that date was in writing, and taken from the Spanish archives, United States Land Commissioners' Records, the American State Papers, and the records of deeds of Escambia County, Florida. There then being no extraneous evidence whatever, there could be no proof of want of authenticity except evidence furnished by the face of the papers themselves.

We have read very carefully every brief, and considered every argument ever filed during this protracted litigation, and the only contentions which we have been able to find on this point are the following:

We ask the Court to make the inquiry as to whether any one of them, or all together, would justify a jury in finding fraud, or justify a Court in refusing to set aside a verdict so found.

In pursuing this inquiry the Court will find that there are no disputed facts, but that the plaintiff relied upon the theory that there are inferences from the facts, which the jury, and the jury alone, was authorized to draw. These inferences, however, are entirely fanciful and speculative and the jury could not reasonably draw them and the Court will apply the rule that whether an inference can be reasonably drawn is for the Court; whether it ought to be drawn is for the jury.

Randall vs. B. & O. R. R. Co., 109 U. S., 483.
Metropolitan Railway Co. vs. Jackson, L. R. App. Cas., pp. 193, 197, 200, 207, 211.

It is suggested as affecting Protocol A that no deed to Gregorio Caro, the purchaser thereunder, is put in evidence. Why the absence of a deed to him should be evidence of fraud, is not obvious. The act of sale signed by him, by all the heirs and by the witnesses (page 207, and the approval of the government, page 208,) constitute a record of this title. There was nobody to make him a deed. "If he solicits the same," Masot, the Governor, ordered that testimony be issued "to the purchaser of the proceedings of the sale and of this proceeding" (page 208). Is it evidence of fraud that he did not solicit it, or, if he solicited it, he did

not procure it? He acted on it, and next day made a deed, relying upon the title acquired by it (page 234).

It is further suggested as affecting the authenticity of the Protocol that the translation of it does not purport to be a full translation of the proceedings (page 154) This suggestion was made in the Circuit Court and was met by the introduction of the translation of all the Protocol (pages 187 to 222).

It is suggested as raising an issue as to the authenticity of the Protocol A that there was a lack of evidence of its age. We have met this by saying that the proof of a finding in the proper custody of a paper purporting to be more than 30 years old, dispenses with proof of the age of the paper, and necessarily forbids any presumption of fraud arising from the lack of proof of such age.

The suggestion is made that doubt is thrown upon the authenticity of this Protocol because it was not found until about 30 years ago—after the institution of a suit by the Rivas heirs against C. M. Cooper who held under the Pensacola City Co There is no evidence of this fact, because the answer of the Pensacola City Co., in which the statement appears, (page 79,) was not evidence against the defendants. But if it was evidence, the fact that a document lies for decades in a public office and is not brought to light until an attack is made upon the title held under it by the institution of a suit and until a necessity for its use arrives, can furnish no ground for even a suspicion that it has not been in the archives all the time.

Nor is there more force in the suggestion that we may presume a fraudulent placing Protocol A in the archives because La Rua, the custodian, upon the evacuation by the confederate troops and the inhabitants of Pensacola at the outbreak of the civil war, (historical facts of which the Court will take notice,) took with him the archives. If this be the law, then every title in West Florida dependent upon the Spanish archives and in Escambia County, Florida, dependent upon the records of that County, are subject to the same rule, for he took all of them.

Nor is there greater force in the suggestion that George Brainard, the agent of the Pensacola City Co., had access to the records, and therefore that the jury should have been permitted to presume that he forged this paper and

put it among the archives—to presume a fraud because a man had an opportunity to commit it.

A complete answer to this suggestion as to a possible recent manufacture of Protocol A is found in the fact that indisputable evidence made by public officials and disinterested persons, and of record for 50 years before the Cooper suit, shows that there was a judicial sale of the property at the time, and to the person indicated in this protocol, and therefore that the fact of such sale could not have been of recent manufacture. Without Protocol A, there would have been ample evidence upon which the Court would have indisputably found that such sale had been made, and that the evidence of it had been lost.

The suggestion that it was for the jury to infer fraudulent manufacture of the Protocol A because it was never filed or recorded, is met by the answer heretofore made, that no Spanish law is shown requiring or authorizing the putting of a file mark on a Protocol, or the recording of such papers.

Nor would it have been permissible for a jury to find this Protocol as fraudulent as suggested by plaintiffs, because there was no evidence as to how, when or where it came into the archives. Such a requirement would forbid the use of all files of any kind of a public office in the Union.

* * * * * * * *

There are suggestions also that outside of the question of the authenticity of the Protocol A, there were questions for the jury; that is,

That there was evidence of possession in the heirs of Gabriel Rivas for more than 80 years so as to acquire title by the statute of limitations. We deny that there was any such evidence. There was no testimony of one day's possession from the time of the sale to Gregorio Caro to the time in 1870 when A. V. Caro began to get possession of portions by putting tenants in possession. From 1870 to 1889 when Fisher took possession as Receiver, the Rivas heirs had possession of portions and the Pensacola City Co. and its assigns had possession of other portions, so that neither could get title by adverse possession of any portion except that which was actually possessed by them. The defense of the statute of limitations was set up as to this tract by the Rivas heirs and those claiming under them

in the case of Davidson vs. Petterson hereinbefore mentioned, and was sustained by the Court as to Petterson and Campderros (page 31,) and denied as to the rest, and upon appeal to the Supreme Court of Florida, the character of possession was examined and it decided that no title except in the two persons mentioned had accrued by virtue of the statute (36 Fla, 36.) There is no pretense that the plaintiffs or any Rivas heirs ever occupied the lots claimed by the defendants in this suit.

An exhaustive search of the record will show the Court only one contested fact, that is, whether Joseph E. Caro ever asserted any title for his wife in the tract of land as testified to by A. V. Caro. The only person making this assertion is A. V. Caro, the man who, as it appears, has been the only active agency in disputing the title of the Pensacola City Company, and he can only say: "All I know is that my father claimed it; said it belonged to his wife," (p. 37, record.) "All I know is that my father claimed it for his wife. I recollect my father used to send a drayman to the land when he wanted wood. I was quite a boy then, but I remember he used to haul wood out there for him. I recollect that, when I was a boy, there was a good sized house with flat top and United States hospital there," (p. 52, record.) "I heard my father speak about the Rivas Tract and claim it for my mother, and said it was on Bayou Texar." (p. 52, record.) "I *understood* my father to claim the tract of land for my mother as an heir of Gabriel Rivas; always spoke of it in that way, probably the subject would not come up for years. He used to talk to Moreno about it; they are dead now." (p. 54, record.) This loose testimony and the loose statements contained in it would not authorize any jury to disregard the conclusive evidence which we have given above, including Joseph E. Caro's participation in proceedings necessarily involving the validity of the divesture of the title out of Paula Rivas, and his own solemn declaration in the Abstract A (p. 56, record.) that this title was in John Chabeau, through the very sale now disputed. The Court will notice that the testimony is the testimony of a man sixty-six or sixty-seven years old, testifying to what he understood his father to say before he himself reached the age of thirteen years, and, therefore, while quite a boy. (p. 52, record.) He says on this page: "I said my father always claimed that tract of

land for his wife, I knew that he claimed it in 1848, or somewhere about that time; I was then about thirteen years old, I suppose, I am not certain about the exact age."

But if Joseph E. Caro had claimed it for his wife, such claim must have been after 1840, for not only was the certificate that we have mentioned made by him in 1835, but A. V. Caro, the witness, was not born until 1837, (page 34, record,) and if he began to remember questions of title at three years old, he could not remember back of 1840. But in that year the sale was twenty-three years old, and all the conveyances prior to the one made to the Pensacola City Company, (a corporation,) in 1870, and all the official and judicial declarations had taken place without a dissent on the part of Paula Rivas, or any one representing her. While the authenticity of written muniments of title is to be judged of, in large part, by the surrounding and succeeding facts, yet, the facts of dominant weight must be those which transpire while the occurrence is fresh in the minds of the actors and other persons connected therewith, and such facts cannot be countervailed by a loose assertion of title made twenty-three or more years afterwards by a participant in such occurrences, who had theretofore persistently disclaimed all title.

For the same reason, the possession taken by A. V. Caro in 1869 or 1870, (fifty-three years afterwards) could have no bearing upon the authenticity of the sale. It followed too many unequivocal acts showing reliance upon and recognition of the sale, and it occurred at too remote a period to have any bearing except to show A. V. Caro's opinion as to the desirability of asserting title.

It does not appear, however, that this title was even his first reliance, for we find that at the inception of his possession he purchased a quit claim title from one John Chabeau, (page 38, record,) and that he would have bought it for the Pensacola City Company but that, as he asserts, the agent of that Company did not leave money for him with which to buy it (same page)

We then find him leasing as agent for John Brosnaham (same page.) So that there was no unequivocal assertion of title under Paula Rivas.

As possession, his acts had no affirmative value, for they consisted merely of leasing to tenants, while the Pensacola City Co., and its assigns, were leasing and occupying also.

In short, it was a mere scrambling possession, and has been twice declared by the Supreme Court of Florida not to have any effect upon the title.

Caro vs. Pensacola City Co., 19 Fla., 766.
Davidson vs. Petterson. et al., 36 Fla., 36.

There was, then, no fact for the court to leave to the jury.

* * * * * * * *

The rule of the Federal Courts as to the right of the Judge to direct a verdict under such circumstances as are presented, is well settled.

"It is well settled that the court may withdraw a case from them altogether and direct a verdict for the plaintiff or the defendant, as the one or the other may be proper, where *the evidence* is undisputed *or is of such conclusive character* that the court, in the exercise of a sound judicial discretion, would be compelled to set aside a verdict returned in opposition to it." "If the evidence was so conclusive against the defendant, upon the question of its negligence, that the jury could not *reasonably* find to the contrary, it was competent for the court, within the doctrines of the cases above cited, to so instruct them."

Delaware, &c., R. R. Co. vs. Converse, 139 U. S. 472.

"Such a direction is eminently proper, when it would be the duty of the court to set aside a different verdict, if one were rendered. It would be a idle proceeding to submit the evidence to the jury, when they could *justly* find only in one way."

North Penn. R. R vs. Commercial Bank, 123 U. S. 733.

"A verdict in favor of the plaintiff would have been against both the law and the evidence, and would necessarily have been set aside. Under such circumstances a court should not permit the jury to render a verdict, but, should, in order to expedite the due administration of justice, direct such verdict as is plainly indicated, and as will dispose of the controversy at the earliest moment proper, with the least costs to the parties. It was clear to the trial judge—a conclusion in which we fully concur—that, as a matter of law, no recovery could have been had by the plaintiff below upon any view which could *properly* have

been taken of the facts the evidence tended to establish. Under such circumstances a verdict should be directed."

Chapman vs. Yellow Poplar Lumber Co. 85 Fed. Rep. 905.

"The bill of exceptions sets out all the evidence in the case and that which was excluded. If the whole evidence, with all inferences that the jury could *justifiably* draw from it, was insufficient to support a verdict for the defendants, now plaintiffs in error, the case will not be reversed, although there may have been errors committed by the court below in rulings on evidence, in charges given, and in the refusal to give certain charges requested by the defendants."

Hinds vs. Keith, 57 Fed. Rep. 15.

The fact that there is some evidence tending to prove a point in favor of a party, does not necessarily prevent the court from directing the jury to find against him.

"Judges are no longer required to submit a case to the jury merely because some evidence has been introduced by the party having the burden of proof, unless the evidence be of such a character that it would warrant the jury to proceed in finding a verdict in favor of the party introducing such evidence. Ryder vs. Wombwell, L. R., 4 Exch. 39.

"Decided cases may be found where it is held that, if there is a scintilla of evidence in support of a case, the judge is bound to leave it to the jury; but the modern decisions have established a more reasonable rule, to-wit: that, before the evidence is left to the jury, there is, or may be in every case a preliminary question for the judge, not whether there is literally no evidence, but whether there is any upon which a jury can *properly* proceed to find a verdict for the party producing it, upon whom the burden of proof is imposed.

"Apply that rule to the question before the court, and it is clear that the ruling of the circuit court was correct, as there is no evidence reported in the transcript which would have warranted the jury in finding the issue for the defendants."

Commissioners of Marion Co. vs. Clark, 4 Otto, p. 278.

The care with which an appellate court will refrain from

reversing in a case of this kind is well stated by this Court as follows:

"The judge is primarily responsible for the just outcome of the trial. He is not a mere moderator of a town meeting, submitting questions to the jury for determination, nor simply ruling on the admissibility of testimony, but one who in our jurisprudence stands charged with full responsibility. He has the same opportunity that jurors have for seeing the witnesses, for noting all those matters in a trial not capable of record, and when in his deliberate opinion there is no excuse for a verdict save in favor of one party, and he so rules by instructions to that effect, an appellate court will pay large respect to his judgment."

Patton vs. Texas & Pacific Ry. Co., 179 U. S, 661.

* * * * * * * *

The evidence of possession for seven years by William Fisher so as to bar any rights of the plaintiffs was so positive as to require the Court to instruct the jury to find for the defendants. It made no difference whether this title acquired by the statute of limitations was or was not acquired by defendants or those under whom they held, for the plaintiffs were required to succeed upon their own title, and not the want of title of defendants, and defendants could set up outstanding title in a third person:

Doswell vs. de la Lanzo, 20 How., 29.

Hanrich vs. Patrich, 119 U. S., 172.

The Statute of Limitations in Florida, arising from possession under color of title, is seven years. (Appendix E.)

The Will of Gabriel Rivas.

We have debated with ourselves whether we would discuss this will, its authenticity and validity, for the reason that the will was duly probated and declared to be legal, and the appointment of the Executrix recognized (page 130).

This was a proceeding *in rem*, established the genuineness of the instrument, its admissibility to probate, its validity, and the right of the executor under it, and is not subject to collateral attack by any one.

Gaines vs. New Orleans, 6 Wall, 642.

This doctrine has been applied specifically to the decree of an Alcalde of Spain probating a will.

Fouvergne vs. New Orleans, 18 How., 47.

And for the further reason that its existence or non-existence would not concern the judicial act of sale upon which we rely. Even though there were no will, the Court had power to appoint representatives of the estate, and if it recognized Maria Moreno and dealt with her as such representative, the validity of the proceedings would not be attackable by any other Court.

A will might be necessary to transmit the title of real estate, but not to authorize the Court to appoint such persons as it might see fit to sell the property for administration purposes; besides this, if it were a partition sale as contended by the plaintiffs, all the heirs were parties, and it was effectual without any Executor or Administrator.

If, however, the questions are still open and material, then we affirm that the will was both authentic and valid.

Its admissibility and authenticity is in the same position as the admissibility and authenticity of Protocol A, and we need not further discuss the grounds discussed as to that.

Special attack is, however, made upon the *authenticity of the will*, because,

It was not recorded or registered. As we have said as to the Protocol, no Spanish law is shown requiring either recording or registering. However, it was ordered by Governor Folch to be recorded (page 131,) and the presumption is that it was done. We produce the original, and not the record, and there is no law known to us requiring the original to show that it had been recorded. The copy required by the Governor to be annexed to the Protocol A and which was annexed, certifies, "it is in conformity with the original will that remains filed in the corresponding book, and by virtue of an order this was taken so as to append to the proceedings of the said Rivas, deceased. Pensacola, October 7, 1817. Domingo Sausa." (page 204.)

The second contention of plaintiffs in error is that the document evidencing the will and probate is suspicuous, because the probate did not take place within a month after the death of the testator.

To this we answer:

That the plaintiffs in error mistake the facts, for Gabriel Rivas died on April 28th, 1808, (pages 195 and 205, record,)

was buried April 29th, 1808, (page 204, record,) and the will was probated April 30, 1808, (page 130, record.)

The making of this contention and the small misstatement of the facts in the case displayed in it, illustrate the speculative character of the contentions of the plaintiffs in error, and the straws at which they grasp for the purpose of defeating the title under which the defendants in error claim.

A third attack is that it does not appear that Jose Maria de la Pena signed at the request of the testator.

We do not see the pertinency, but the point shows again the liability of the plaintiffs to mistakes of fact. While two translations of the will (pages 123, 129,) say "signing as my friend, John Maria de la Pena, friend of Gabriel Rivas, and as he could not write," yet the other translation says "signing at my request. Mr. Jose Marie de la Pena," (page 204,) and this accords with the original, "Al ruego (at the request of) de Gabriel de Rivas por no saber firmar" (pages 118, 120). (Both the original and the translations are so miserably copied in the record as to be at times unintelligible, the Spanish document as found in the record containing many words that never existed in any language.)

A fourth attack is made that the will purports to be signed by another at Rivas' request as Rivas did not know how to write, while the marriage contract with Maria Moreno purports to be signed by Gabriel de Rivas in the presence of witnesses, (page 188,) and a promissory note in the record purports to be signed by Gabriel Rivas (page 191). The note, however, has the name crossed, and we have other evidence that he could not write because it is so stated in the signing of a due bill made by him 27th of October, 1802 (page 192).

The fact that in one instance he purported to sign his name does not necessarily imply that he signed it with his own hand, for it is no uncommon thing for persons who cannot write to get other persons to sign their names without mention of the assistance.

At any rate, the one instance could not stand against the others and against the host of evidences of the fact that he has made a will, including the facts not heretofore mentioned, that Santiago Coleman (Parish Priest) so certifies (page 205), and that Governor Masot so recognizes and

orders a copy to be annexed to the testamentary proceedings.

The suggestion is made that Gabriel Rivas had accumulated two houses and that the jury might therefore be allowed to infer that he could write.

Such arguments as these destroy any effect that might be given to the other arguments of the plaintiffs.

It is also suggested that Manuel de Lara, one of the witnesses to the will, was asked if it was his signature, and did not answer, and that this was suspicious.

Again counsel are misled by the translation (page 227) which shows no assertion by him that it was his signature. The original, however, does so assert in the words "dexo que es sa firma" (page (117).

The attacks upon the *validity of the will* are:

That Gabriel de Rivas did not sign it. It is shown that he could not sign.

That only three witnesses signed with the testator. No law is shown requiring any witness to sign with him. The only law cited is the third law of Toro, which is as follows:

"In the closed testament, which in Latin is called *in scriptis*, we order that there *intervene* at the least seven witnesses with a notary, who shall sign on the cover of the draft of said testament, they and the testator, if they know how or can sign, and if they do not know how, and the testator cannot sign, that some sign for the others; in order that there may be eight signatures, and also the mark of the notary; which said testaments, if they shall not have the said solemnity of witnesses, we order that they have not faith nor proof either in court or thereout."

That only requires that seven witnesses shall intervene, and shall sign on the cover—not in the will.

That no escribano or notary was present and signing:

It does not appear that there was any notary in Pensacola, which was a military post, but it does appear that notaries were at this and other periods, not available and that official acts were performed without them: For instance, there was no notary to be had to take the testimony of the witness to the will. This appears in the words "y por falta de escribano real y publica" in the order of Folch (page 114), and therefore the Governor appointed commissioners (the translation, page 154, does not show this, but this only adds to the proof of

the inaccuracy of the translation as it appears in the record.) This was in April, 1808. In 1810 it appears that there was no notary available to be present at the signing of the will of Joseph Marshall, for he so says at the conclusion of his will, which, while signed in the presence of seven witnesses, was not in the presence of a notary: "For want of a notary" (page 427.)

And again,

Joseph Callava, Governor of West Florida, signed the deed from Fitzsimmons to Chabeau in the presence of additional witnesses "for want of a notary public" (top of page 238, record).

And again,

Assistant witnesses were named by Governor DeSoto, because there was no Notary Public, "no haber escribano publico." (Bottom page 262, Record)

* * * * * * * *

The line of attack adopted by the plaintiffs in error, and their reliance upon fragmentary and ambiguous extracts from an English compilation of Spanish laws, shows the great wisdom of this and of other courts, in declaring that it was not contemplated by the king of Spain that our courts should critically pass upon the acts of the Spanish officials, or upon rights fixed under the Spanish law.

Strother vs. Lucas, 12 Pet., 439.

No case could better illustrate the soundness of this principle than this, in which after a lapse of eighty-five years this court is asked to believe that it knows the Spanish law so thoroughly and accurately that it can declare that a title created by the act of Spanish officials, approved afterwards by them, passed upon formally, only six years thereafter, by the United States Land Commissioners, men learned in Spanish law, and asserted by holders under that title for more than four-fifths of a century, is based upon muniments of title suspicious and ineffective, because apparently some formalities of the Spanish law were not complied with.

* * * * * * * *

The authenticity of the particular protocol offered was not important. If Protocol A was actually lost on its way to Havana, as claimed by plaintiffs in error, and if the instrument offered by us was spurious, yet the facts that we

have detailed in this brief, and which were *absolutely* uncontradicted, required the court, in the absence of any counter testimony, to declare that such sale had been made; that it conveyed the title to Gregorio Caro, and that the defendants were entitled to rely upon it, although the written evidence of the sale itself actually offered was not admissible. In other words, it would have been the duty of the court, irrespective of this instrument, to declare that the title was founded upon a lost instrument, that is, the lost evidence of this judicial sale. The quantum of proof for this, and the presumptions that are to be made are so well settled that we content ourselves without citing cases on the subject. The circumstances which we have set forth fully heretofore, necessitated a finding by the court, and a direction to the jury that there was a sale, but that if the instrument actually offered evidencing it was not genuine, the genuine evidence had been lost.

Respectfully submitted,

WM. A. BLOUNT,
A. C. BLOUNT, JR.,
Attorneys for Defendants in Error.

APPENDIX A.

AN ACT to incorporate the City of Pensacola and to repeal the act entitled an act to incorporate the City of Pensacola, and improve the public roads in the neighborhood thereof, approved 5th December, 1825.

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That all free white inhabitants of that part of the County of Escambia, comprehended within the following boundaries, that is to say, bounded on the South and East, by the harbour of Pensacola, on the West, by Bayou Chico, on the North, by a line drawn North and East, from Galvez Spring, to where the said line will intersect the Bayou Texar, thence with the said bayou to Pensacola Bay, shall be, and they are hereby constituted a body politic, and corporate, by the name and style of the City of Pensacola, and by their corporate name, may sue and be sued, implead and be impleaded, grant, receive and do all other acts as natural persons, and may purchase and hold real, personal, and mixed property, or dispose of the same, for the benefit of the said City, and may have and use a city seal which may be broken or altered at pleasure.

* * * * * * * *

Approved Feb. 16, 1833.

APPENDIX B.

JOHN QUINCY ADAMS,

President of the United States of America,

To all who shall see these presents, Greeting:

Know Ye, That reposing special trust and confidence in the Integrity, Diligence and Discretion of Joseph E. Caro of Pensacola I have nominated, and by and with the advice and consent of the Senate do appoint him Keeper of the Public Archives in West Florida, and do authorize and empower him to execute and fulfil the duties of that office according to Law; And to have and to hold the said office, with all the rights and emoluments thereunto legally ap-

pertaining, unto him, the said Joseph E. Caro, during the pleasure of the United States for the time being.

In Testimony whereof, I have caused these letters to be made patent, and the Seal of the United States to be hereunto affixed. Given under my hand, at the City of Washington, the seventh day (L. S.) of March in the year of our Lord one thousand eight hundred and twenty-five and of the Independence of the United States of America, the Forty-Ninth.

J. Q. ADAMS.

By the President
H. CLAY,
Secretary of State.

No. 25246.

UNITED STATES OF AMERICA.

DEPARTMENT OF STATE.

To all whom these Presents shall come, Greeting:

I certify that the document hereto affixed is a true copy from the records of this department.

IN TESTIMONY WHEREOF I, John Hay, Secretary of State of the United States, have hereunto subscribed my name and caused the Seal of the Department of State to be affixed.

DONE AT THE CITY OF WASHINGTON this 28th day of September, A. D., 1904, and of the Independence of the United States of America the one hundred and twenty-ninth.

(Seal.) (Signed) JOHN HAY.

APPENDIX C.

Chapter 1,296. (No. 39.)

AN ACT to authorize Filo E. de LaRua to hold the office of keeper of Spanish Archives.

Section 1. Be it enacted by the Senate and House of Representatives of the State of Florida in General Assembly

convened, that Filo E. de LaRua of the county of Escambia, and clerk of the Circuit Court of said county, be and he is hereby authorized to hold, exercise and perform the duties of the office of Keeper of the Spanish Archives at the City of Pensacola, to which said office he has heretofore been appointed by the Governor and General Assembly of this State.

"Passed the House of Representatives November 23, 1861. Passed the Senate November 27, A. D. 1861. Approved by the Governor, November 30, 1861."

APPENDIX D.

DEPARTMENT OF THE INTERIOR.

WASHINGTON.

October 7, 1895.

The Commissioner of the General Land Office:

Sir: I have your office communication of April 2, 1895, recommending that the public archives in Florida be transferred to the office of the Surveyor-General of Florida.

It appears that the Spanish archives of West Florida are in the possession of Mr. John de La Rua and others at Pensacola, and the Surveyor-General has made demand on these parties for the return of the same and has only received "dilatory replies." You transmit letters of remonstrance against their removal written by Hon. S. R. Mallory and W. A. Blount of Pensacola, who submitted that, as fully ninety per cent of the matter embraced in the archives related to lands and titles in Pensacola county, and but a small fraction of the remainder has reference to lands within a reasonable distance of Tallahassee it would work much inconvenience to remove the archives to that place, which is distant two hundred and ten miles from Pensacola.

After a careful examination of the legislation on the subject, and the instructions and correspondence therein, I am of opinion that these archives are held without proper legal authority, and I concur in your office recommendation that all the records of every nature pertaining to the domain of Florida should be in the hands of the proper federal officials for that State, and that the interests of the government will

be best subserved by placing them all in charge of the Surveyor-General at Tallahassee, who under existing regulations, can permit their examination, and the taking of such copies as may be required.

You are directed to take such steps as may appear necessary to that end

Very respectfully,
WM. H. SIMS,
Acting Secretary.

Received December 16, 1895, at Tallahassee, Florida, from A. P. Swineford, Inspector of Surveyors General and District Land Offices, the old Spanish Archives and papers enumerated below, the same having been shipped to this office by Southern Express from Pensacola, Florida, where they were in the possession of John de la Rua, Clerk of the Circuit Court for the County of Escambia, Florida:

"Book "A" First Volume Record Translations."

"Book "B" Second Volume Record Translations."

"Book "A" consisting of a record of all the Spanish Titles which have been laid before the land commissioners for confirmation and the plats and the certificates of surveyors of said lands granted by the Spanish Government in the Province of West Florida."

"First Volume of Records of Proceedings, Secretary's Book, containing a record of the proceedings of the Commissioners for settlement of claims to lands in the Territory of Florida, July 15, 1822."

"Second Volume Record of Proceedings, Secretary's Book, 1824," and thirteen packages of what are commonly known as "Protocols."

(Signed) W. H. MILTON, Jr.,
U. S. Surveyor General,
Dist. of Florida.

DEPARTMENT OF THE INTERIOR,
General Land Office,
Washington, D. C., March 28th, 1904.

I hereby certify that the annexed copy of letter of the Acting Secretary of the Interior, dated October 7, 1895, and copy of receipt of W. H. Milton, Jr., U. S. Surveyor General of Florida, dated December 16, 1895, are true and

literal exemplifications of the originals on file in the General Land Office.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

(Official Seal) (Signed) W. A. RICHARDS,
Commissioner of the General
Land Office.

APPENDIX E.

1. CONTINUED OCCUPATION FOR SEVEN YEARS REQUIRED.—Whenever it shall appear that the occupant, or those under whom he claims, entered into possession of premises under claim of title exclusive of any other right, founding such claim upon a written instrument as being a conveyance of the premises in question, or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the premises included in such instrument, decree of judgment for seven years, the premises so included shall be deemed to have been held adversely, except that where the premises so included consist of a tract divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract.

Sec. 1290 Revised Statutes of Florida.

APPENDIX 10.

In Escambia County Circuit Court, State of Florida.
In Chancery.

W. H. Davidson, W. E. Anderson, Peter Knowles, C. C. Yonge, Sr. et al.,
Complainants,
vs.
J. C. Pettersen, Joseph C. Keyser, John B. Caro, et al.,
Respondents.

To the Hon. E. C. Maxwell, Judge of the First Judicial Circuit Court, Escambia County, Florida:

Your petitioners, John B. Caro, Joseph C. Keyser and

Josephine Caro, who appears herein by her next friend Albert V. Caro, respectfully show unto your Honor:

1st.

That they are each over the age of twenty-one years, except the said Josephine Caro, who is a minor, under the age of eighteen years, and that they are respondents in the said cause of W. H. Davidson *et al.* vs. J. C. Pettersen *et al.*

2nd.

That Hon. James F. McClellan, judge of said court, granted in said cause an alleged interlocutory injunction against your petitioners on the 5th day of March, 1887, and made on the 4th day of April, 1887, an alleged order appointing William Fisher an alleged receiver of the Rivas tract in the City of Pensacola, in said county and state, and on January 17th, 1889, made said alleged interlocutory injunction perpetual and rendered an alleged final decree in the said cause against your petitioners, as shown by certified copies, marked Exhibits "A" and "B" and "C" hereto attached and made a part hereof.

3rd.

Your petitioners suggest the death of the said complainants, Peter Knowles, C. C Yonge, Sr., E. A. Perry and W. D. Chipley, since the 17th day of January, 1880, and that your petitioner, John B. Caro, was an infant at the time of the said several orders and decrees, and reached his majority on the 26th day of December, 1900.

4th.

Your petitioners show unto your Honor that at the time of the granting of said interlocutory injunction and said order appointing said Fisher as receiver and granting of said alleged perpetual injunction and final decree, the said Judge McClellan was of kin by affinity to the said C. C. Yonge, Sr., a party plaintiff to said cause, the said McClellan having previously intermarried with the sister of the said C. C. Yonge, Sr., and having at the time of said several orders and decrees, living children, the issue of said intermarriage of said Judge McClellan and his wife, the sister of said C. C. Yonge, Sr.

5th.

Your petitioners further show unto your Honor that they never learned until February 10th, 1901, of the said relationship of said Judge McClellan and said C. C. Yonge, Sr.

6th.

Your petitioners submit and state, that by reason of the premises, the said alleged interlocutory and perpetual injunctions and orders of the said Judge McClellan, are without jurisdiction and of no force or validity, and null and void.

7th.

Your petitioners further show unto your Honor that the said Fisher still claims to be such receiver for said Rivas Tract.

Wherefore, your petitioners pray, that the said alleged interlocutory and perpetual injunctions and orders appointing said Fisher as receiver, and the said alleged final decree of said Judge McClellan, be declared of no force or validity and null and void.

Your petitioners pray for such other, further and additional relief as may be equitable in the premises.

RICH. H. FRIES,
Solicitor for Petitioners.

On July 10th, 1901, the complainants filed the following answer:

W. H. Davidson et al.
vs.
J. C. Pettersen et al.

The complainants for answer to the petition of John B. Caro, Joseph C. Keyser, and Josephine Caro to vacate interlocutory and final decree made in this cause on April 4th, 1887, and January 17th, 1899, says:

1.

Answering the second paragraph of the petition that the final decree made in said cause was appealed by petitioners

and others to the Supreme Court of the State of Florida and there examined upon its merits and a decree rendered by the Supreme Court affirming the final decrees of the said J. F. McClellan.

2.

Answering the fourth paragraph the complainants say that more than ten years prior to the beginning of this suit the wife of the said J. F. McClellan, the sister of the said C. C. Yonge, Sr., had died.

BLOUNT & BLOUNT,
Solicitors for Complainants.

Petitioners demur to the foregoing answer.

R. H. FRIES,
BENJ. S. LIDDON,
Sols. for Petrs.

July 10th, 1901.

We waive formal demurrer. Certificate.

BLOUNT & BLOUNT,
Sols. for Resp.

July 10th, 1901.

The petitioners, John B. Caro, Joseph C. Keyser and Josephine Caro, by her next friend Albert V. Caro coming on to be heard upon the petition and answers thereto filed before me July 13th, 1901, and having been argued by counsel for the respective parties and the court being now advised in the premises, and it appearing from the certificate of the Honorable E. C. Maxwell, Judge of the First Judicial Circuit of Florida, that he is disqualified from acting in the said cause,

Now, therefore, it is ordered, adjudged and decreed that said petition to vacate the decrees heretofore entered in said cause be and the same is hereby denied.

Done at Jacksonville, Florida, this July 13th, 1901.

R. M. CALL,
Judge of the 4th Judicial Circuit of Florida.

And at a subsequent day, to-wit: on the 17th day of November, A. D. 1903, judgment was rendered by the said

supreme court of Florida in words and figures as follows, to-wit:

Supreme Court of Florida, June Term, A. D. 1903.

J. B. Caro, J. C. Keyser, and Josephine Caro, by Her Next Friend, A. V. Caro, Appellants vs. W. H. Davidson, W. E. Anderson, Peter Knowles, C. C. Yonge, et al., Appellees.	Upon Appeal from a Decree of the Circuit Court within and for the County of Escambia.

This cause having been submitted to the court at a previous term thereof upon a transcript of the record of the decree aforesaid and the argument of the counsel for the respective parties, and the record having been seen and inspected, and the court being now advised of its judgment to be given in the premises, it seems to the court that there is no error in the decree; it is, therefore, considered, ordered and adjudged by the court that the said decree of the circuit court be and is hereby affirmed; and it is further ordered that the appellees do recover of the appellants their costs by them in this behalf expended, which
30 costs are taxed at the sum of —; all of which is ordered to be certified to the court below.

The decision of the court in this cause was this day read, and ordered to be filed.

R. F. TAYLOR,
Chief-justice.

By the courtesy of the U. S. Surveyor General and upon request of the Presiding Judge of the Circuit Court of Appeals, this Court has before it the following original papers:

1. The will of Gabriel Rivas and the envelope containing the same, together with the probate of such will.
2. The original of Protocol "A," which constituted the proceedings to sell at the judicial sale under the Spanish Government, the property in controversy.
3. The original of Protocol "B," which constituted the proceedings to sell another part of the property of Rivas.
4. The original abstract of claims in West Florida, certified by Joseph E. Caro and showing the judicial sale relied upon by defendants in error to have been made.
5. The original plats "A" and "B," certified by Joseph E. Caro, of the courses and distances defining the land in controversy.

By stipulation of counsel the Court also has before it:

1. The plat annexed to the deed from William H. Chase and others to Walter Gregory and others, showing that the Pensacola City Company, at the time of making that deed in 1837, claimed this property.
2 The George E. Chase plan made by the same Company and showing a claim by it to the said land at or about the same time.
3 The map made by Pensacola City Company in 1872, showing a like assertion of title.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1904.

No. 134.

FLORIDA McGUIRE AND MATILDA CARO,

vs.

WM. A. BLOUNT, WM. FISHER, ET AL.

Supplimentary Brief of WM. A. BLOUNT and A. C. BLOUNT, JR., Attorneys for Defendants in Error.

We have just seen the brief of the plaintiffs in error. In our brief already filed, we have discussed many points of substantive law, which at one time or other Attorneys for the Rivas heirs have argued, and which we supposed might be argued here. In this we have been mistaken, and it becomes proper that we supplement that brief by filing this as an index to those portions of that brief which are in answer to the brief of the plaintiffs in error, and as a further meeting of their present contentions.

For the convenience of the Court we do this in the order in which *points* are made by the plaintiffs in error, following their paging consecutively. In doing so we will call special attention of the court to the frequent assertions by them which have no foundation in facts in the record.

I.

Page 10, Brief of Plaintiffs in Error.

Plaintiffs in error say that they proved possession of the property, for A. V. Caro knows that his father claimed this land for his wife, got wood off of it, and the witness himself lived there in 1869, and is still living there, and acts as agent for the other heirs.

There is no particle of testimony to prove any possession of this property by the Rivas heirs prior to 1870; upon the

contrary A. V. Caro says that his father never took possession of it (Page 37.) It is true A. V. Caro is still living upon a piece of land given him by Wm. Fisher, one of the defendants in error (Page 89-309.) It is not true that he acts as agent for the other heirs, for he himself testifies that since the injunction against him in 1881 he has not so acted (Page 34-37.)

It is also true as claimed on this page that Ephriam Pleasure staid on the land by permission of Caro, and paid rent to him, but it is not mentioned by plaintiffs in error, although it is true, that Ephriam Pleasure was the tenant of the Pensacola City Company, and that Caro caused him to attorn to him, (68) an attornment which, of course, without notice of the repudiation of the tenancy of Pleasure to the original landlord was without force.

2.

Page 11, Brief of Plaintiffs in Error.

Plaintiffs in error say that the statute of limitation was not pleaded by defendants. It was not necessary that it should be pleaded,

1. Because the defendants did not set up their own adverse possession as a defense, but relied upon the statute of limitation as creating a title in third persons, and thus defeating plaintiffs' claim.

2. Under the statute of Florida, the plea of not guilty, covers the defense of the statute of limitation.

Wade vs. Doyle, 17 Fla., 522.

See as to the loss of any right of plaintiffs in error by the statute of limitation, pages 54 to 56 and 65, brief of defendants in error.

3.

Pages 11 and 12, Brief of Plaintiffs in Error.

The plaintiffs in error reiterate twice (here and on page 70 of their brief) the absurd contention that Wm. Fisher and Wm. A. Blount recognized the title of plaintiffs in error. There is no particle of evidence to this effect, as a most cursory examination of the record would show. (See as fully treating this, pages 55 and 56, brief of defendants in error.)

4.

Page 12, Brief of Plaintiffs in Error.

Plaintiffs in error assert that they had actual prior possession of the land. There is no particle of evidence to this effect. Jos. E. Caro, as the representative of his wife, did not take possession (A. V. Caro's testimony, page 37) and there was no possession by any Rivas heirs until 1870, when A. V. Caro procured that Ephriam Pleasure, a tenant of the Pensacola City Company, should attorn to him (pages 69 and 70.) See as to this claim of prior possession, brief of defendants in error, pages 56 and 57.

5.

Page 13, Brief of Plaintiffs in Error.

Plaintiffs in error say that Fisher derived title from A. V. Caro, one of the Rivas heirs, who derived from Jno. W. Frater, and that it is not attempted to show that Frater derived title from Gregorio Caro, the purchaser at the judicial sale of 1817. This is not a fact. Frater derived from A. V. Caro, who derived from Chas. Ahrens, who derived from Henry Ahrens, who bought from the trustees of the Pensacola City Company, who claimed under Gregorio Caro, all of which we have shown. See page 55, brief of defendants in error.

6.

Page 14, Brief of Plaintiffs in Error.

Plaintiffs in error say that the sale under the will of Gabriel Rivas was invalid because it was not made within a year after the death of the testator. This sale, however, was not a sale under the will, but by the authority of the court and there is no time limit to such authority. (See page 47, brief of defendants in error.)

7.

Page 15, Brief of Plaintiffs in Error.

Plaintiffs in error say that it does not appear anywhere that Maria Moreno gave assent to the sale evidenced by protocol "A." Again this is a specific ignoring of the

plainest evidence. She submitted to the Governor a statement of her accounts with the estate (162, 164, 195, 197) and submitted herself to the orders of the Governor (164 and 169) She was notified at every step of this proceeding, which resulted in the sale (197, 204, 205, 208, 211,) assisted in the appointment of appraisers, (200) received her share of the proceeds of the sale (210) and agreed "to all that has been done." (211.)

8.

Page 16, Brief of Plaintiffs in Error.

Plaintiffs in error say that the answer and recommendation of Eugenio Sierra (page 145) refers to proceedings served on him "on the 9th inst.," but that it does not appear what those proceedings were, or before whom.

The proceedings appear on pages 197 and 198, and the notice to Sierra on page 198.

The proceedings were instituted by Maria Moreno. (See her reports, and see specially the statement of Jos. E. Caro, that it was done upon her petition, which statement occurs in his consent for his wife that the sale should be made "if the Tribunal deem it proper.") (201.)

9.

Page 17, Brief of Plaintiffs in Error.

Plaintiffs in error say that no order of the Tribunal ordering the sale of the land is given. The order appears distinctly on pages 215, 201, 203.

10.

Page 18, Brief of Plaintiffs in Error.

The plaintiffs in error say that the order of the Tribunal that the property should be knocked down to Gregorio Caro is not given. The order was given verbally, the Governor, Auditor of War, and Assessor General being present, and is contained in the report of the proceedings (page 206.)

11.

Page 19, Brief of Plaintiffs in Error.

Plaintiffs in error say that there is no evidence of Gregorio Caro ever having taken possession under these proceedings. True, but he relied upon them, and made a sale of the property on the next day, (page 234) and his grantees have been asserting title from that time to the present day. (See brief of defendants, pages 7 to 17.)

12.

Page 20, Brief of Plaintiffs in Error.

Plaintiffs in error say that the translation, page 152, exhibit 12, or protocol "A," is not a full translation. True, but this objection does not appear in the record, and if it did, is overcome by the subsequent introduction of a full translation. (186 to 222.)

13.

Pages 21 to 29, Brief of Plaintiffs in Error.

The Plaintiffs in error complain of the nullity of certain decrees rendered in Escambia County Circuit Court, but the validity or invalidity of these decrees in no wise affected the rights of either of the parties in the trial of this case. (See pages 54 and 55, brief of defendants in error.)

14.

Page 26, Brief of Plaintiffs in Error.

The plaintiffs in error say that they were entitled to recover upon their prior possession. As to this we answer that there is no proof that they ever had any prior possession, no proof of entry by defendants upon such possession, and no proof that there was by the plaintiffs in error at any time other than a scrambling possession. (See as to this, pages 56 and 57, brief of defendants in error.)

15.

Pages 27 to 28, Brief of Plaintiffs in Error.

Plaintiffs in error contend that the Judge erred in not recusing himself.

For answer to this see page 4, brief of defendants in error.

16.

Page 28, Brief of Plaintiffs in Error.

Plaintiffs in error assert that the Court erred in admitting the record in the case of A. V. Caro vs. Jaudon, *et al*, Trustees of the Pensacola City Company (pages 39 to 51).

This was offered for the purpose of showing that A. V. Caro who had testified that he had acted as agent for all the Rivas heirs, in taking care of this property after 1870, had himself been in possession of it for the Pensacola City Company, and sued the trustees of that Company, and recovered a verdict for taking care of it. This was clearly permissible as showing possession by the Pensacola City Company, which claimed under the sale evidenced by Protocol "A."

If not, no objection can be raised here except the one raised below. (Page 39.)

Maish vs. Arizona, 164 U. S., 602.

Culbertson vs. Witbeck Co., 127 U. S., 333.

That objection was that no reference was made in the record to this tract of land. The record showed that he sued for taking care of *all* the lands of the defendants, (page 45,) and whether he did or not was a question of fact. As to this other witnesses testified that he did have possession of this tract of land.

Moreover the testimony did not affect the result, since the documentary evidence shows the title not to be in plaintiffs.

17.

Page 29, Brief of Plaintiffs in Error.

Plaintiffs in error allege that the Court erred in admitting the abstract of claims adjudicated by the Land Commissioners and certified by Jos. E. Caro.

This objection is met by our discussion on page 31 of our brief. We specially ask the attention of the Court, however, to the form of the exception. (Pages 54 and 55.) There was no objection that it was not the authentic instrument of Joseph E. Caro, or that its execution was not

proved, or that it had not been filed; but the sole objection was to its use for a certain purpose. The law clearly is that in this Court no objection to its admissibility other than that made below can be made.

Authorities under No. 16.

18.

Page 31, Brief of Plaintiffs in Error.

Plaintiffs in error object to the admissibility of Protocol "A." We have exhaustively discussed this in our brief (pages 19 to 30) and shown that the Protocol was admissible, because it came from the proper official custody and because it was shown to be an ancient document. We now discuss some minor objections made in the brief of plaintiff in error.

1. That there was no evidence that the translations of the Protocol were correct, or by whom they were made.

The all sufficient answer is that no such objection was made below and none appears in the Record. If it had been made it could very easily have been met by showing by whom the translation was made and that it was correct, or by having it translated orally before the Court.

2. Objection is made to Exhibit 12, (pages 146 and 154.) which is a translation of a part of Protocol "A," but it is needless to discuss these objections, because Exhibit 12 is embraced in Exhibit 14, which is the translation of the Protocol. (Pages 187 to 222.)

3. Objection is made to Exhibit 14, because the correctness of the translation is not sworn to. (Page 33, brief of plaintiff in error.) No objection was made on this ground in the Court below and none appears in the record.

4. Objection is made to Exhibit 11, which is a tracing of Protocol "A," because it is under the private seal of R. L. Scarlett, U. S. Surveyor General, because it is not shown that it was a true copy, or that it had been filed or recorded, or that there was any properly authenticated certificate as to its genuineness.

We have answered all of these objections (pages 18 to 30 and page 36, our Brief), except the objection that it is under the private seal of the U. S. Surveyor General. The answer to this objection is that no objection was made upon that score in the Court below.

19.

Pages 31 and 32, Brief of Plaintiffs in Error.

Objection is made to the proof of the will of Gabriel Rivas and the correctness of the translation. As to the will, it suffices to say that no objection of that kind was made in the Court below. As to every other attack and as to the materiality of this will, see pages 65 to 67 of brief of defendants in error.

20.

Page 39, Brief of Plaintiffs in Error.

Plaintiffs in error allege that there is no evidence offered to show when or where these documents were found.

The agreement of counsel in the Court below was that all the "Spanish documents introduced by each side came from the custody of R. L. Scarlett, Surveyor General of the United States, *Keeper of the Archives.* (Page 109.)

21.

Page 39, Brief of Plaintiffs in Error.

The plaintiffs in error say that these papers were not known to exist until after 1872 and that this was admitted by the Pensacola City Company in a bill filed by it. This is an incorrect and misleading statement. The allegation in the bill referred to is:

"That the suit was brought (by E. J. Caro and others. heirs of Rivas,) upon the supposition that there was no recorded evidence of a sale of said land by the said Gabriel Rivas, or his representative, but soon after the said suit was instituted, on a thorough search of the Spanish Archives, in the office in Pensacola, above referred to proceedings were found, whereupon the attorney who advised and instituted the action, being satisfied that the estate of Rivas had no title in the land, promptly withdrew from the case." (Page 78.)

This means simply that the existence of the papers was unknown to the Pensacola City Company and the Rivas heirs, themselves, until the questioning of the title of the former for the first time caused a search to be made. There was no occasion for a search until that time. This is not

equivalent to saying that the existence of the papers was unknown to anyone before that period.

It will be noted that they were found in the *Spanish Archives in the office at Pensacola.*

22.

Page 41 et seq. Brief of the Plaintiffs in Error.

Plaintiffs in error object to Exhibits 15 to 26, upon various grounds. We consider all the exceptions, generally, first, and then each one separately.

The Court will find that the only exceptions taken upon the trial are those already discussed to the record in the case of Caro vs. Jaudon et al., Trustees of Pensacola City Company, (pages 40 to 51), and the abstract made by Jos. E. Caro and the omnibus exceptions on pages 298 to 300. If any available exceptions to the exhibits under consideration are to be found they are on these last mentioned pages.

But there are none available, except as to exhibit 21—the deed from Gregorio Caro to Fitzsimmons, Smythe & Chabeau, (Page 233) which is specifically mentioned in the exception. (Page 300)

The objections referred to "said documents offered." What documents are meant are not stated in the objection and the only ones unquestionably referred to are those making up Protocol "A" and the deed just mentioned from Caro to Fitzsimmons and others.

The *grounds*, themselves, state objections which could, in the main, be applicable only to the Protocol and if any of such grounds are intended to apply to the deeds and other instruments offered the objectors do not distinguish between those applicable to the one and those applicable to the other.

"The documents" referred to in the grounds were obviously the papers going to make up protocol "A." When a translation is spoken of it is alluded to only as "the said translation," which would cover only one, and that one, presumably, the Protocol theretofore dealt with exclusively in the objections. While there is an objection to the "documents" on the score that they are not recorded, the objection is not that they are, therefore, not admissible in evidence, but that they are null and void. There are no

objections that there were no seals to any of the exhibits, nor that they were copies and not the originals, nor that they were not properly acknowledged, nor that the copies were not certified under the seal of the officer, etc., all of which objections are now made.

The fact is that there was no objection to any of these papers made or argued upon the trial and that the Court only considered the objections to the abstract of Joseph E. Caro and to Protocol "A." (Pages 300 and 301.) The objections now are made by counsel, who see the apparent defects as they appear on the printed record and do not see the waiver of such defects (if they existed) which took place in the lower Court by the failure to object.

From the foregoing it will be seen that there are three reasons for not considering any objections to the exhibits under discussion, and if any could be considered, those now made cannot be—that is:

1. That no objections whatever were made in the Court below to these papers;
2. That if they were made, they were too vague and unspecific to be available.
3. That they were made, in lump, to a dozen instruments and under the well-known rule, if any of the instruments were admissible the lump objection must be overruled.

As applicable to these contentions we quote:

"The rule it universal, that where an objection is so general as not to indicate the specific grounds upon which it is made, it is unavailing on appeal, unless it be of such a character that it could not have been obviated at the trial. The authorities on this point are all one way. Objections to the admission of evidence must be *of such a specific character as to indicate distinctly the grounds upon which the party relies, so as to give the other side full opportunity to obviate them at the time, if under any circumstance that can be done.*"

Noonan vs. Caledonia Mining Co., 121 U. S., 400.

"In Camden vs. Doremus, How., 515, 530, this Court declined to consider objections made to the admission of evidence which did not state the grounds upon which they were made, and did not obviously cover the competency of such evidence nor point to some definite and specific defects in its character. "We must," the Court said, "con-

sider objections of this character as vague and nugatory, and, if entitled to weight anywhere, certainly as without weight before an appelate Court."

District of Columbia vs. Woodbury, 136 U. S., 462.
U. S. vs. McMasters, 4 Wall., 680;
Brantley vs. Gunn, 29 Ala., 387;
Fitch vs. Woodruff, etc., 29 Conn., 82;
Badders vs. Davis, 88 Ala, 367;
Coveny vs. Hale, 49 Cal., 552.

As to the last ground it is suggested by plaintiffs' counsel that they were compelled to object in bulk. The record does not sustain this contention. (See page 109.) The bill of exceptions states that the defendants proceeded to offer the documents "in block," but upon objection the court ruled that it would permit the offer "of all papers consecutively at one and the same time, subject to the inspection of all said papers and the right to object when the counsel had completed their offer." Under this each paper was offered separately by the defendant. (See pages 109, 116, 121, 129, 137, etc.)

Even though they had been offered in mass the plaintiffs in error were expressly given opportunity to object to them separately and they could and should have so objected and pointed out their objections specifically.

23.

Page 41, Brief of Plaintiffs in Error.

The plaintiffs in error object to Exhibit 15,—the proceedings of the Commissioners of the United States to adjudicate land claims in Florida, (Page 225) upon the ground that it is a translation certified by the Keeper of the Archives under his private hand and seal; that the original is in Spanish and that its absence is not accounted for, etc.

The answer is that no single one of these objections was made to the instrument when offered. The Book "A" was one of the original books of proceedings received by Surveyor General Milton from LaRua, the Keeper of the Archives, (See Appendix "D," brief of defendants in error) and was in the court room at the time of the trial, being one of the archives received from Scarlett, U. S. Surveyor General, as admitted by counsel (Page 109) and, if the ob-

jections had been made in the court below, they could have been obviated in a moment.

24.

Pages 41 and 42, Brief of Plaintiffs in Error.

Plaintiffs in error object to Exhibits 16 and 17,—proceedings before the Commissioners for the settlement of land claims in Florida, (Pages 225 to 228.) These both came from the same Book "A" just mentioned and no objection was made to their introduction. What was introduced was the original Book "A," just mentioned, coming from the custody mentioned.

25.

Page 42, Brief of Plaintiffs in Error.

Plaintiffs object to Exhibit 18,—the abstract furnished by Joseph E. Caro. (Page 230.) This was an original and no objection was made that there was no seal, or that it was not authenticated, or that its execution was not proved, nor, in fact, was any objection made. (See brief of defendants in error, page 31.)

26.

Pages 42 and 43, Brief of Plaintiffs in Error.

Of course, the American State Papers and the Act of Congress were admissible.

27.

Page 43, Brief of Plaintiffs in Error.

Plaintiffs in error object to Exhibit 21,—the deed from Gregorio Caro to Fitzsimmons and others. (Page 233.) Numerous objections are raised, but only one was made at the trial, (Page 300.) It was that it "never having been recorded or made of record in the Spanish Archives, no purported translation can take the place of such missing documents or supply said defendants with a title." What this means is by no means apparent, but it clearly does not cover any of the objections now made for the first time; that is, that the original is not produced; that its authenticity was not proved; that it is a copy of a translation; that

the original must have been in Spanish, while this is in English, and that it does not purport to cover the land in controversy. These objections not having been made, cannot now be urged.

We may say as to some of them, however, that this was a translation so appearing upon its face.

That no law has been shown requiring a translation to be recorded or filed.

That it shows that the original was recorded, because it purports to be a copy from such record.

That it was taken from the archives, Book "B,"—one of the books produced by Scarlett, having been obtained by his predecessor, Milton, U. S. Surveyor General, from the Keeper of the Archives, La Rua, at Pensacola.

That the description was made exact by the statement that the land was the tract of land "I purchased at a public sale made of the estate of Gabriel Rivas, deceased, on the 21st instant," the day before this deed was made.

(See as to this page 32, brief of defendants in error.)

28.

Pages 43 and 44, Brief of Plaintiffs in Error.

Plaintiffs in error object to Exhibit 22. (Page 235.)

The same answers to these objections exist as to set forth under 27 of this supplementary brief, except that to this Exhibit 22 there were not made even the objections to Exhibit 21 on page 300.

29.

Pages 45 and 46, Brief of Plaintiffs in Error.

Plaintiffs in error object to Exhibit 24. (Pages 237 and 298.)

This was introduced for the purpose of showing that the Protocol "A', was not the only original protocol found in the possession of the U. S. Surveyor General.

There was no objection to it. In fact, there could be none. It was an original, coming from the custody of the U. S. Surveyor General and covered by the agreement between counsel for both parties. (Page 109.)

30.

Pages 46 to 55, Brief of Plaintiffs in Error.

Plaintiffs in error object to Exhibits 27 to 32, inclusive, being the partition deed between John Chabeau and Laurent Millaudon, deed from Brosnaham to Gregory, deed from Millaudon to Chase, deed from Exum to Gregory, deed from Exum to Brosnaham and Michelet, deed from Chase and others to Gregory and others, and the deed from the Pensacola City Company, Trustees, to Pensacola City Company, corporation.

The sufficient answer to these objections is that *there was absolutely no objection of any kind or upon any ground made in the court below to any one of them.*

They follow in the record (Pages 310 to 338) the omnibus objections on pages 298 to 300, and after those objections there was no attempt to object to a single instrument offered. We, however, discuss such objection as a matter of precaution.

31.

Page 46, Brief of Plaintiffs in Error.

Plaintiffs in error object to Exhibit 27. (Page 236.)

The objections are that it was a certified copy under a private seal, etc.

These objections were not made below.

The objection that it was in English, although made in 1818, might be met by the statement, which is true, that at that time many deeds in Pensacola were made in English, but is more strongly met by saying that no objection was made on that score, and it was properly in English on the record, even though it was originally in Spanish, for this was the book into which Joseph E. Caro translated the Spanish deeds under direction of the Act of Congress. (4 Stat. at Large, page 136.)

32.

Page 46, Brief of Plaintiffs in Error.

Plaintiffs in error object that the testimony as to payment of taxes, as given by William Fisher and A. C. Blount,

should not have been permitted. This was clearly admissible.

The fact that a receipt is given for the payment of money does not prevent oral proof of the payment without production of the receipt.

Keen vs. Meade, 3 Pet., 1.
Higgins vs. Pryor, 3 Port., 435.

33.

Pages 50 to 53, Brief of Plaintiffs in Error.

Plaintiffs in error object to Exhibits 29, (page 314,) 30, (page 316,) 31 and 32, (pages 319 to 334.)

As we have seen, *there were no objections of any kind to these deeds.* For fuller discussion we refer to our brief, pages 32 to 35, inclusive.

The word "*Samuel* Millaudon" is a wrong copying of the name *Laurent* Millaudon, who, by preceding conveyances, is shown to have owned four-eighteenths of this tract.

34.

Page 54, Brief of Plaintiffs in Error.

Plaintiffs in error say that the deed from Chase to Walter Gregory, et al., shows that the map referred to therein was made before the Pensacola City Company had title. See bottom of page 34 of our brief. At the same place we answer the assertion, based upon the assumed testimony of George O. Brosnaham, that the Pensacola City Company had never claimed the tract in question. Of a kind with the other mistakes of the plaintiffs in error in stating the facts in the record, is this assumption that the Pensacola Land Company was the same as the Pensacola Land Association, which is not a fact.

35.

Page 61, Brief of Plaintiffs in Error.

The plaintiffs in error referring to the fact (important upon the question of adverse possession) as to when William Fisher took possession as Receiver and purporting to state his testimony, say: "He says that he has been Receiver since 1887, and, yet, that he does not know when he went into possession." What he *did* say was:

"I have been Receiver since April, 1887. I do not know

when I went into possession. It was in April, 1887; the order was dated the 14th of April." (Page 87.)

In this the only indefinite thing was the precise day when he took possession.

36.

Page 62, Brief of Plaintiffs in Error.

Plaintiffs in error say that whether Fisher took possession under Judge McClellan's order was a question *in pais* for the jury. But how can that be a question for the jury as to which the testimony is undisputed? Fisher testified, without contradiction, that he "went into possession of the land in controversy, as Receiver in the case of the Pensacola City Company vs. James Wilkins et al., in 1887 and has been in possession ever since." (Page 307.)

37.

Page 65, Brief of Plaintiffs in Error.

The plaintiffs in error claim that the will of Gabriel Rivas does not state that it was signed by Jose Maria de la Pena at the request of Gabriel Rivas. No reason is assigned why this should affect the will. We have, however, shown that the record demonstrates that the will was so signed by De la Pena at Rivas' request. (See our brief, page 67.)

38.

Page 65, Brief of Plaintiffs in Error.

As showing that Gabriel Rivas could write, the plaintiffs in error cite his signature to his marriage contract and to the promissory note. (See our brief, page 67.)

39.

Page 65, Brief of Plaintiffs in Error.

Plaintiffs in error try to raise a suspicion that the probate of the will, and testamentary proceedings for the sale of another lot and for the sale of this particular property were fraudulent, because in this last proceeding there appears a note purporting to be signed by Rivas on October 4, 1812, when the will was probated in 1808, and he, necessarily, if the proceedings are reliable, died before that time. Even if this were unexplained, it would not

control all the other proof as to his death, consisting of the ascertainment thereof by the Governor (pages 122, 128), and the certificate of the Priest (204), and the constant reference to Maria Moreno as his widow, and to him as deceased, but there is evidently a mistake in copying this note (page 158), for the *translation* of the same note shows it to have been made on the 27th of October, 1802. (Page 191.)

The Court will have before it the original proceeding and by reference thereto can find whether the original is dated October 4, 1812, or the 27th of October, 1802.

Even, however, if it was so dated, it would evidently be a mistake, which would be contradicted by every other date in the record and such other dates would control. If the Protocol had been fraudulent, clearly there would not have been imbedded into it, by its author, a statement which showed that it was necessarily fraudulent.

However, whenever he may have died, he was clearly dead when the proceedings took place in 1817 to sell his property. (Pages 186 to 222.)

40.

Pages 71 and 72, Brief of Plaintiffs in Error.

Plaintiffs in error say: "There was undisputed testimony of possession by the Rivas heirs [illegible] some *eighty* odd years *without molestation or interruptio*

We cannot refrain from expressing our admiration at the hardihood which permits or dictates this statement. There is not a scintilla of evidence to show the slightest possession of any Rivas heir of any portion of this land prior to 1869 or 1870. At that time A. V. Caro went into possession by corrupting the tenants of the Pensacola City Company and thereafter he, through his tenants, and the Pensacola City Company and its assigns, through their tenants, occupied different portions of the tract and litigation was going on constantly between them, so that there was up to 1869 or 1870 no possession, and the possession after that was scrambling and litigated. (See pages 12 to 16, brief of defendants in error.)

Respectfully submitted,

W. A. BLOUNT,
A. C. BLOUNT, JR.,
Attorneys for Defendants in Error.

In the Supreme Court of the United States

OCTOBER TERM, 1904.

No. 134.

FLORIDA McGUIRE AND MATILDA CARO, PETITIONERS,

vs.

WILLIAM A. BLOUNT, WILLIAM FISHER, ET. AL., RESPONDENTS.

Additional Brief of William A. Blount and A. C. Blount, Jr., for Respondents.

The respondents have already filed two briefs in this court in this cause, but both were filed before seeing the reply brief of the petitioners, and assuming that the court will consider any suggestions filed before the hearing of the cause, we present these additional detached matters in answer to arguments or suggestions of petitioners.

I.

A general lumping exception to the admission of all of a number of documents offered is unavailing, if any of them be admissible.

As we have before shown, the only objections made to most of the documents offered by the respondents in the court below are found in the consolidated objections on pp. 298-301 of the record. We have also shown that none of these apply specifically to more than one or two of such documents, and therefore, that the only one which could be applicable is the general objection contained in the following sentences: "The foregoing grounds of objections are made to and apply to all and consecutively to the offers

heretofore made consecutively by the defendants." (p. 300.) It is clear, however, that such objection is not available.

Exception to several instructions and "each of them," is not sufficient, if any one be correct.

Holloway vs. Dunham, 170 U. S., 615-619.

So an exception which says, "said exceptions being to the whole of said instructions and to each and every part thereof."

Price vs. Parkhurst, (C. C. A.) 53 Fed. 312.

And to the same effect.

Luttrell vs. Martin, 112 N. C. 593; 17 S. E, 573;
Martin vs. Kline, 157 Pa. St, 473; 27 Atlantic R. 753;
Rio Grande, etc., vs. Cross, 5 Tex. Civ. App. 454; 23 S. W. 529;
Lowe vs. State, 88 Ala. 8; 7 So. 97;
Coveny vs. Hale, 49 Cal. 552;
University vs. Shanks, 40 Wis. 356;
Brantly vs. Gunn, 29 Ala. 392;
Fitch vs. Woodruff, etc., 29 Conn. 82.

As it is said,

"It is the duty of parties to designate specifically the parts of the evidence, and of the charges to which they object. We could not assume the burden of examining every question and answer in depositions or bills of exceptions, often very long and tedious, simply to encourage a loose practice or to save counsel the labor of making their objections appropriately and intelligently. Counsel are expected to take such exceptions only as they rely on, and to take them specifically. General and sweeping exceptions to any things resting in detail, will be disregarded here, when any single detail is correct."

University vs. Shanks, 40 Wis. 356.

If, as a matter of fact, the objections had been made below, or if the want of them in the bill of exceptions had not obviated the necessity for a close inspection by the respondents of the defaults alleged to exist, we would not contend for the strict rule as to the necessity of making exceptions and preserving them in the bill. As a matter of fact, however, the most of the objections now presented by briefs of petitioners were not made or argued in the court below, and in view of this fact and of the facts shown as to the method of the preparation and presentation of the bill of exceptions, and the inability of counsel for respon-

dents to review carefully that bill (pp. 455-486) we have no hesitation in asking the court to apply the rule to its most rigid extent.

The inaccuracy of the bill is apparent almost every where, but as directing the attention of the court to specific instances, we refer to the pretense of setting forth that portion of the American State Papers showing the confirmation by the commissioners of this grant. The portion copied in the bill as offered, omits any statement that the claim was presented by John Chabeaux, and confirmed to John Chabeaux, (p. 231,) while the American State Papers from which it purports to have been copied show distinctly such confirmation. (Vol. 4 Am. St. Papers, p. 103.)

Another evident inaccuracy in copying is to be found on page 334, under the caption "Note by the Clerk," and the last two lines upon that page. The matter as set forth is nonsense and nothing else and was contained upon no paper.

Other inaccuracies, and in some cases vital ones, will be evident to any member of the court familiar with the Spanish Language upon reading those portions of the bill of exceptions which purport to be copies of the Spanish originals offered, for they contain innumerable words which are not found in the Spanish nor in any other known language, and are products of ignorance and carelessness of the persons who compiled them.

2.

The possession of John de La Rua, from whom the Surveyor-General obtained the Spanish Archives, was a reasonable and natural possession.

The history of the possession of these archives is shown at p. 22 of the first brief of defendants in error. Plaintiffs, however, say that no connection of John de La Rua with these papers is shown. But they were in possession of his father, who was Clerk of the Circuit Court. (See Certificates p. 348-340-338, etc.)

While his father had such possession he was Deputy Clerk. See certificate by him (1882,) page 338, (1890,) p. 348, and (1891,) p. 367.

He afterwards became clerk. See his certificate as such on pp. 347 (1892) and 341 (1894.) And from him, being such, the archives were received by the United States Surveyor-General.

It matters not that he was not the officer of the United States, and as such entitled to the possession of them. He came by them naturally and reasonably, and the question in a case of this kind is not what is the most proper possession, but what is the reasonable possession

"It is not necessary that they should be found in the best and most proper place of deposit. If documents continued in such custody, there never would be any question as to their authenticity; but it is when documents are found in other than their proper place of deposit that the investigation commences, whether it was reasonable and natural under the circumstances in the particular case to expect that they should have been in the place where they are actually found; for it is obvious that while there can be only one place of deposit strictly and absolutely proper, there may be many and various that are reasonable and probable, though differing in degree; some being more so, some less; and in those cases the proposition to be determined is, whether the actual custody is so reasonably and probably accounted for that it impresses the mind with the conviction that the instrument found in such custody must be genuine."

Tindale, Chief Justice, in Bishop of Meath vs. Marquis of Winchester, 3 Bing. N. C., 183;
Gibson vs. Poor, 21 N. H., 441;
Doe vs. Pearce, 2 Mood & Rob. 240.

3.

The Court will take judicial notice of the papers and of the laws and decisions of Florida set forth as appendices to the first brief of respondents.

As to the laws citation is unnecessary.

As to the documents, they being records of the departments of State and of the Interior, see:

New York, etc., vs. U. S. 170 U. S. 32;
Heath vs. Wallace, 138 U. S. 583-584;

As to this court taking notice of the judicial decisions of a State in the same manner as the courts of that State, see:

Cheever vs. Wilson, 9 Wallace, 108.

4.

A defendant in ejectment need show no title, but can prove outstanding title in a third person without connecting himself with it.

This has been so many times decided that it is scarcely necessary to add to what we have said in our first brief upon the subject (p. 56) but as a late authority in point we cite:

Henderson vs. Wanamaker, (C. C. A.,) 79 Fed. 736, 739 and 740 and citations.

5.

The newness of the paper fasteners and of the yellow paper covering of Protocol "A," furnishes no suspicion that the protocol is of recent manufacture.

We file with the Clerk of this Court an affidavit and attach to this brief a copy, as Appendix 11, showing that the Chief Clerk of the Surveyor-General fastened the parts of the protocol and covered it for protection within the past two years, since this suit has been pending.

It was so apparent that the fasteners and the cover were not a part of the protocol itself, that really no affidavit was required, and the comment upon the fastening and the covers show the straits to which the plaintiffs in error are forced in their effort to find suspicious circumstances.

The affidavit also shows that the same Chief Clerk brought the original documents to this court from the Surveyor-General's office.

6.

The protocol was an original and correctly designated as a protocol.

Counsel of complainant in error say:

"Under the following law what is here offered is certainly not the official record of a sale.

It is not a protocol within the recognized meaning of that word. These are offered *as the original papers*, while a protocol is a record of such papers made and kept by the officer.

"PROTOCOL. (1) Civ. Law. The record made and kept by a Notary of a contract or other act executed before him."

Standard Dictionary."

The point which they desire to make is not very apparent to us, but if a point, is based upon a misconception of the meaning of the word "protocol," which is not a record but the original papers themselves.

"Under the Spanish system of conveyancing, a public instrument is divided into three classes: The original draft, register or protocol (registro,) the original and the copy. The register is the original draft or writing, which is delivered, and remains in the possession of the escribano, which we also call 'protocol,' by which doubts are determined that may be offered with respect to the instruments which are copied from it."

Sheldon vs. Milmo, 90 Tex. 21: 36 S. W. 413.

Webster's definition is,

"The first leaf glued to the rolls of papyrus and the notarial documents on which the date was written.

The original of any writing, as of a treaty, despatch or other instrument.

The minutes or rough draft of an instrument or transaction."

And in the Gulf States, in which the Spanish law prevailed, the papers showing the progressive proceedings in any transaction in a court, which together make the whole record, have been invariably called protocols.

Respectfully submitted,

W. A. BLOUNT, AND
A. C. BLOUNT, JR.,
Attorneys for Defendants in Error.

Appendix 11.

STATE OF FLORIDA, }
COUNTY OF LEON. }

Before the undersigned, a Notary Public, duly appointed, commissioned and qualified in and for the said County, personally appeared S. B. Chapin, who being duly sworn, says that he is the chief clerk of the U. S Surveyor-General for the State of Florida; that as such clerk he is familiar with a Spanish document in the Spanish Archives of the State of Florida, held in the custody of the said Surveyor-General, which Spanish document purports to be a history of the judicial sale of three hundred arpents of land in the City of Pensacola belonging to one Gabriel Rivas, deceased, said instrument being known as Protocol "A," that the said document, together with other documents, was taken by affiant, personally, from the archives aforesaid, in the custody of the U. S. Surveyor-General of Florida, and transported to Washington, D. C., and there delivered into the custody of the Clerk of the Supreme Court of the United States, that at the time of the delivery of said papers the sheets of said Protocol "A" were attached together by brass fastenings and the said Protocol was enclosed in a yellow wrapper; that the said fastenings were placed in said paper by affiant within two years before this date, for the purpose of preventing the loss of any of the sheets of the said Protocol, which, by reason of their age, were becoming detached and separated, and the said yellow paper was likewise placed around said papers, for their better protection.

(Signed) S. B. CHAPIN,
Chief Clerk, Office of U. S. Surveyor-General
District of Florida.

Sworn to and subscribed before me this 9th day of February, 1905.

T. F. PERKINS,
Notary Public,
State of Florida at Large.

My commission expires June 24th, 1907.

IN THE SUPREME COURT OF THE UNITED STATES,

CERTIORARI.

OCTOBER TERM, 1904.

No. 134.

FLORIDA McGUIRE AND MATILDA CARO,
PETITIONERS,

vs.

WILLIAM A. BLOUNT, WILLIAM FISHER, MRS. WILLIAM FISHER, PENSACOLA CITY COMPANY, THOMAS C. WATSON, JOHN WILLIAMS AND JAMES M. BULLARD, RESPONDENTS.

TO THE HONORABLE JUDGES OF SAID COURT:

The petition of the respondents respectfully shows—

1:

THAT upon the motion of counsel for the petitioners, made in the Circuit Court of Appeals, (Page 1, Transcript) the said Court made an order directing that the following enumerated papers should not be printed in the transcript of record from the Circuit Court upon writ of error to the said Circuit Court of Appeals, and that, in accordance with such order, the said below enumerated papers were omitted from such printed transcript.

2:

THAT the return of the Clerk of the said Circuit Court of Appeals (Page 489, Transcript) to the Writ of Certiorari in this cause does not certify the said enumerated papers, but, as appears from said return, expressly omitted said papers, and that the same have not been certified to this Court and are not now before the Court.

That the said papers are as follows:

1. Plat attached to grant by the Spanish Governor Morales to Gabriel Rivas, showing the land granted. That

it was omitted is shown in the transcript of record before this Court at page 28.

2. Plat certified by Joseph E. Caro as a part of the description of the land in controversy. That this was omitted is shown in the transcript of record before this Court at page 231.

3. The plan of the old and new town of the City of Pensacola, attached to the deed from William H. Chase et al. to Walter Gregory et al. That this was omitted is shown in the transcript of record before this Court at page 334.

4. The George E. Chase map of the New City of Pensacola, offered by defendants in the Circuit Court, as Exhibit No. 24. That this is omitted is shown in the transcript of record before this Court at page 306.

5. The Harding & Lee map of the New City of Pensacola, offered by defendants in the Circuit Court as Exhibit No. 25. That this was omitted is shown in the transcript of record before this Court at pages 306 and 307.

These petitioners show unto this Honorable Court that the omission of the said papers is greatly to their disadvantage, for the following reasons, to-wit:

1. As to the plat mentioned in paragraph one above, it is material that said plat should be before the Court for the reason:

These petitioners rely largely upon the divesture of the title to the property in controversy out of Gabriel Rivas, the ancestor of the plaintiffs, by a public, official sale, and the plaintiffs in the Court below contended, among other things, that the land sold at such sale was not the land granted to Gabriel Rivas. The plat covered by this paragraph of this petition is the only plat showing the land granted to Rivas, and a comparison of it with the plats covered by paragraphs two and three of this petition show that they and it are identical. The latter two plats were made in connection with the assertion of title to the property in controversy by persons claiming such title only under the said public sale and the identity of the property described in the plats covered by paragraphs two and three with the plat covered by paragraph one furnishes the strongest evidence that the land granted, according to the plat in paragraph one, was sold at the public sale, in pursuance of which the plats covered in paragraphs two and three were made.

2. The plaintiffs denied and these petitioners affirmed the authenticity of Protocol "A," which evidenced the said public sale. Upon the question of such authenticity the acts of persons connected with the land, which would not usually and naturally have been done unless there had been such sale, are of much force in determining the probability of the sale. The plat covered by this paragraph, two, was made by Joseph E. Caro, Keeper of the Spanish Archives, and identified lands which he, in the abstract accompanying the plat, asserted to have been sold at such public sale. He was also the husband of the heir of Gabriel Rivas, under whom the plaintiffs claim. The plat is identical with the plat attached to the grant of Gabriel Rivas and is of the highest value as evidence that there was sale of the lands granted to the said Rivas.

3. William H. Chase, as Trustee for others, was the grantee of the land in controversy under deeds coming down directly from such public sale. When he made a sale to others in trust for his cestuis que trust, he attached to the deed a plat (covered by this paragraph, three, above) of the property sold. The deed itself does not describe the property conveyed, except by reference to the plat (Transcript, page 323), but the plat defines the property and shows a part of the property conveyed to be the property claimed by these petitioners to have been sold at the said public sale. Without the plat the deed is meaningless; with the plat the deed shows a clear, public, recorded assertion of title by the grantor claiming only under such public sale and is therefore, the strongest evidence that such sale had been made.

4. At about the same time W. H. Chase and his associates caused their property in the City of Pensacola to be mapped, as a part of said City. Such map was lithographed and, as shown by the deed, (Pages 324 and 329 to 332) more than eleven hundred lots were sold by it. This was an assertion of ownership by persons claiming under the said public sale and evidence of the fact that such sale had been made. This map is covered by paragraph four above.

5. The Pensacola City Company, to whose Trustees the conveyance last mentioned was made, conveyed by its Trustees, on May 30, 1870, the same property to the Pensacola City Company, a corporation. That corporation

caused a new map to be made, conforming the streets to the plan of the Old City of Pensacola (Page 306), and by this new map three hundred sales of lots were made (Page 308). These acts, and this map particularly, were assertions of title by the Pensacola City Company and of the existence of the public sale, under which it claimed. This map is covered by paragraph five above.

That defendants in error are advised and believe that it is material to the proper and adequate presentation of the merits of this cause to this Court that the said maps and plats should be before this Court upon the argument and consideration of the cause.

That the omission of the said papers by the Clerk of the Circuit Court of Appeals was without the consent or acquiescence of defendants in error. That this suggestion and motion has not been made before, because the printed copy of the record has just been received by the attorneys for defendants in error and they have, therefore, just seen therefrom and from the certificate of the Clerk of the Circuit Court of Appeals thereto, that the said maps and plats had not been certified by said Clerk to this Court.

WHEREFORE, these petitioners pray that this Honorable Court may award to them a writ of certiorari, directed to the Clerk of the Circuit Court of Appeals of the Fifth Judical Circuit of the United States, requiring him to certify to this Court the papers hereinbefore mentioned, in order that the record of the cause as it existed in the said Circuit Court of Appeals may be complete in this Court.

And petitioners will ever pray.

WM. A. BLOUNT
&
A. C. BLOUNT, JR.,
Attorneys for Petitioners.

The petitioners are not desirous of entailing unnecessary expense upon the plaintiffs in error in this cause by the printing or lithographing of the plats hereinbefore mentioned, and, therefore, (if this Honorable Court will permit), agree that the same shall not be printed or lithographed when the return shall have been made by the Clerk of the

Circuit Court of Appeals, but that the copies so returned by the Clerk shall be considered by this Court.

WM. A. BLOUNT
&
A. C. BLOUNT, Jr.,
Attorneys for Petitioners.

STATE OF FLORIDA,
COUNTY OF ESCAMBIA.

Before the undersigned, a Notary Public duly commissioned, sworn and acting in and for the said County of Escambia, State of Florida, personally appeared William A. Blount, known to me to be the individual described by that name, and being duly sworn, says that the facts stated in the foregoing petition are true.

W. A. BLOUNT.

Sworn to and subscribed before me this 10th day of December, A. D. 1904.

H. P. HOLMES,
Notary Public.

NOTARIAL SEAL.

IN THE SUPREME COURT OF THE UNITED STATES.

Florida McGuire and Matilda Caro
vs.
William A. Blount, William Fisher, et al.

CERTIORARI.
No. 134.
October Term, 1904.

The petitioners for the Writ of Certiorari in this cause, FLORIDA McGUIRE and MATILDA CARO, will please take notice that the motion for Writ of Certiorari, upon suggestion of the diminution of the record, a copy of which motion is hereto attached, will be brought to a hearing before the Honorable Supreme Court of the United States,

at Washington, D. C., on Monday the twenty-sixth day of December, 1904, or as soon thereafter as the said Court will hear the same.

W. A. BLOUNT
&
A. C. BLOUNT, JR.,
Attorneys for Defendants in Error.

To Messrs. Herbert & Micou and
E. T. Davis and Simeon Belden,
Attorneys for Plaintiffs in Error.

Pensacola, Fla., Dec. 10, 1904.

I, E. T. Davis, one of the attorneys for Florida McGuire and Matilda Caro, in the foregoing cause, do hereby certify that I have received this day a copy of the foregoing notice and of the petition suggesting a diminution of the record, as setforth therein.

E. T. DAVIS,
Of Counsel for Florida McGuire
and Matilda Caro.

Supreme Court of the United States.

No. 6.—October Term, 1905.

Florida McGuire and Matilda Caro
vs.
William A. Blount, William Fisher, Mrs. William Fisher, The Pensacola City Company, Thomas C. Watson, John Williams, James M. Bullard.

On certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[October 30, 1905.]

Mr. Justice Day delivered the opinion of the Court.

This case was begun in the Circuit Court of the United States for the Northern District of Florida to recover in ejectment certain lands described in the declaration. The defendants answered, and issues were joined as to the right of possession of the lands in question.

Upon the trial, after the testimony was submitted and the cause argued, the court instructed the jury to find for the defendants. Upon writ of error this judgment was affirmed by the Circuit Court of Appeals. (121 Fed. Rep. 1020.)

The plaintiffs, when the case was called for trial, filed a written motion or petition, challenging the right of the presiding judge to hear the case, and praying that he "recuse" himself. The petition was denied and the judge presided at the trial of the case. The ground of the petition for recusation was that the wife of the judge had acquired an interest in the property which was the subject matter of the litigation. The petition was not sworn to, and while a statement was made of the desire of the plaintiffs to offer testimony in support thereof, the names of witnesses were not furnished, no affidavits were filed, and no definite statement made of what witnesses would say if permitted to testify. The judge overruled this motion, stating that his wife had no interest in the property, and with a view to convey an interest the vendor had tendered a quitclaim deed to his wife, which had been declined, and no delivery ever made thereof or title vested in her. Later the judge placed on file an affidavit of a real estate agent, stating substantially the same facts.

While the courts cannot too carefully guard against any attempt of an interested judge to force himself upon litigating parties, and should scrupulously maintain the right of every litigant to an impartial and disinterested tribunal for the determination of his rights, we find in this record nothing establishing or offering to establish in any legitimate way the disqualifi-

cation relied upon because of a pecuniary interest in the controversy resulting from his wife's alleged ownership of a part of the land in question.

The petitioners, who were plaintiffs in the original case, sought to recover the tract of land as the heirs of one Gabriel Rivas. The tract originally owned by him consisted of about three hundred "arpents" of land near the city of Pensacola, Fla.

The defendants at the trial undertook to defeat the plaintiffs' right of recovery, not by establishing a perfect title in themselves, but relied upon showing the divestiture of the plaintiffs' title as heirs of Gabriel Rivas. It is elementary law that the plaintiff in ejectment must recover upon the strength of his own title, which must be sufficiently established to warrant a verdict in his favor. (*McNitt* v. *Turner*, 16 Wall. 352, 362; *Watts* v. *Lindsey*, 7 Wheat. 158.)

A defendant in ejectment, who is not a mere trespasser or interloper, may show an oustanding and subsisting title in a stranger to defeat the plaintiff's right of recovery. (*Love* v. *Simms*, 9 Wheat. 515; *Smith* v. *McCann*, 24 How. 398; *King* v. *Mullins*, 171 U. S. 404–437.)

Relying on this right, the defendants sought to show, by the production of certain ancient documents, bound together, styled a protocol, that Gabriel Rivas' will had been established by proceedings had during the Spanish control of Florida, which showed that Rivas, who had received the lands in controversy by grant of November 10, 1806, from Morales, intendant, etc., of Spain, had died on April 28, 1808, his will being probated by certain proceedings approved by the governor of Florida on May 2, 1808. In this protocol proceedings are shown for the sale of the three hundred (300) arpents of lands, which belonged to Rivas, resulting in a sale to one Gregario Caro, which sale purports to have been approved by the civil and military governor of West Florida. These original documents, evidencing the probate of the will of Rivas and the sale of the lands, including those in controversy, were presented to this court, having been admitted in testimony at the trial against the objections of plaintiffs under the stipulation that they came from the custody of the surveyor general of the United States, keeper of the archives. Many objections are urged to the authenticity and admissibility of these documents as well as to the regularity of the proceedings under the Spanish law. The production of the originals of these documents has given the court an opportunity to inspect them. They bear upon their face every evidence of age and authenticity. There is nothing about them to suggest that they have been forged or tampered with. They present an honest as well as ancient appearance and come from official custody. To such public and proprietary records the courts have applied the rules of admissibility governing ancient documents. (3 Wigmore Evid. sec. 2145, and notes.) With reference to such documents and records it is only necessary to show that

they are of the age of thirty years and come from a natural and reasonable custody; from a place where they might reasonably be expected to be found. (3 Wigmore, secs. 2138 and 2139.) While the testimony tends to show that these documents were subjected to various changes of possession during the transition of the government of Florida from Spain to the United States and upon the evacuation of Pensacola during the civil war, there is nothing to establish that they were ever out of the hands of a proper custodian. Nor is there proof to show that the originals were lost, or any evidence of a fraudulent substitution of a made-up record in the interest of parties to be benefited thereby.

In view of the frequency with which these proceedings have been given express or tacit recognition in subsequent official investigations and conveyances of the lands, corroborating the inference of genuineness to be gathered from the appearance and history of these documents, and the possession of the lands conveyed, we have no question that the court properly admitted them in evidence.

Admitting the correctness of this ruling, the inquiry follows, Did the judicial sale operate to divest the Rivas heirs of title to the lands? The lands were purchased at the sale on October 20, 1817, by one Gregario Caro. The sale to Caro was duly approved and confirmed on October 21, 1817. Caro conveyed to Fitzsimmons, Smythe and Chebeaux on October 22, 1817. The sale in the judicial proceeding was recited in this deed, which was " passed " or approved by Masot, civil and military governor of West Florida.

Various technical objections have been urged as to the regularity of the proceedings. Some of these might have possibly availed had they been urged as objections to their regularity in the forum where they were had. But it is to be remembered that we are here dealing with proceedings had eighty-five years ago, under a foreign system of laws, by which it was undertaken to convey title to the premises. Such proceedings are not to be scrutinized with a view to discovering defects. They were sufficient in the view of those who undertook to pass title to the lands under the Spanish system, and our courts should have neither the right nor the disposition to upset such titles by a nice examination of the regularity of the proceedings. Every presumption is in favor of the authority and authenticity of such proceedings. (*Strother* v. *Lucas*, 12 Pet. 410–438.) If this were not so great confusion and uncertainty of titles would arise, especially when title depends upon the action of early colonial governors undertaking to exercise the sovereign power which they represented. Such authority is presumed to be legitimate and regularly exercised. (*United States* v. *Arredondo et al.*, 6 Pet. 691–727.) Moreover, it appears that sale of the land have been made under the title conveyed by the proceedings and the conveyance to Gregario Caro, and the sale has been subsequently held

sufficient to convey the title by the commissioners appointed under the act of Congress of May 8, 1822, for ascertaining titles to lands within the territory of Florida. The report of the commissioners was subsequently ratified and confirmed by act of Congress of April 22, 1826. (4 Stat. 156.) While this action of the commissioners and of Congress may not have concluded others claiming the property, it was based upon the judicial proceedings evidenced by the protocol and is strong evidence of their authenticity and regularity. Those claiming in the chain of title from this conveyance have made sale of many pieces of the property, various conveyances have recited the proceedings under the will of Rivas and the conveyance to Caro, and to upset them and declare them of no effect would be to unseat many titles to real estate, conveyances which have stood for years without question. We have no hesitation in reaching a conclusion, under the facts shown in this record, that title to the lands of Gabriel Rivas, under whom the plaintiffs in ejectment claim title as heirs, was divested by the proceedings had under the Spanish authorities in Florida, and the conveyance of the lands therein to Caro, from whom by other conveyances many persons have acquired title to the land in controversy.

Nor are we more impressed by the claim that the plaintiffs were in adverse and continuous possession of the property so as to acquire title by prescription. The alleged possession of the plaintiffs has not been of that character which could ripen into a prescriptive title. The alleged agent of the plaintiffs may have had some occupation of a part of the territory, not embracing the lots in controversy, and it appears that he obtained the payment of the rent from certain tenants of a land company known as the Pensacola City Company, which derived title in the chain of conveyances running back to Gregario Caro. But it also appears that this agent for the heirs of Rivas was engaged in looking after the lands for the land company, for a time at least, and that he purchased the outstanding title of one Chebeaux, who also derived title under Caro. The plaintiffs certainly did not establish or introduce testimony fairly tending to establish that open, notorious, continuous, adverse possession which gives a title by prescription. While the defendants below did not show complete title in themselves, they were not mere interlopers or trespassers, but were claiming the lands under deeds, and were entitled to show as a defense in ejectment an outstanding title in another. It is strenuously urged that, whatever the merits of the controversy, there was sufficient proof to require a trial judge to submit the case to a jury, but no rule is better established in this court than that which permits a presiding judge to direct a verdict in favor of one of the parties when the testimony and all the inferences which the jury could justifiably draw therefrom

would be insufficient to support a different verdict. It is clear that where the court would be bound to set aside a verdict for want of testimony to support it, it may direct a finding in the first instance and not await the enforcement of its view by granting a new trial. (*Elliott* v. *Chicago, M. & St. P. Rwy. Co.*, 150 U. S. 245; *Union Pacific Rwy. Co.* v. *McDonald*, 152 U. S. 262; *Anderson County Commrs.* v. *Beal*, 113 U. S. 227; *Delaware, L. & W. R. R.* v. *Converse*, 139 U. S. 469.)

This view of the case warranted an instruction directing a verdict at the trial in favor of the defendants, and renders it unnecessary to consider the other errors alleged to have been committed at the trial.

The judgment of the Circuit Court of Appeals is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.